

*The  
Usurping Octopus  
of Jurisdictional  
Authority:*

**The Legal Theories of the  
Sovereign Citizen Movement**

**Francis X. Sullivan**

# The Usurping Octopus of Jurisdictional Authority: The Legal Theories of the Sovereign Citizen Movement (1999) Francis X. Sullivan<sup>1</sup>

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<sup>1</sup> The Usurping Octopus of Jurisdictional Authority: The Legal Theories of the Sovereign Citizen Movement (1999) Francis X. Sullivan <https://famguardian.org/PublishedAuthors/LawReviews/WiscLawRvw/UsurpOctJurAuth.htm>

**On October 1, 1995, Corporal Victor Kurtz of the Belton, Missouri, Police Department stopped James Horton for driving without a valid license plate.<sup>2</sup> Instead, Horton's car bore the following sign:**

**Public Notice: Non-commercial, private property CITIZEN OF MISSOURI HORTON  
In exercise of RIGHT TO TRAVEL streets & highways Mo. Const. Art. I, Sect.  
1,2,10,11,14,22(a),28,31/RSMo 1.200, 301.120, 301.320 46 Mo. 574,  
St. Louis v. Grone/29 Mo. App. 280, Hannibal v. Price; U.S.  
Constitution Art. IV, Sect. 2; Ammendment [sic]<sup>3</sup> Art. V, IX, XIV<sup>4</sup>**

Charged with driving without a valid driver's license, driving without a license plate, and failing to provide proof of insurance, Horton was tried twice and fined a total of \$ 100 plus court costs.<sup>5</sup> He then filed a pro se appeal claiming, among other things, that a yellow-fringed flag in the courtroom created a "foreign power" and that the judge, as "supreme ruler of a foreign power," did not have jurisdiction over him.<sup>6</sup> Not surprisingly, he lost.<sup>6</sup>

Reading this case in isolation, Horton appears irrational. He behaved in a way designed to provoke conflict with the police, then litigated based on theories that most people would dismiss as ridiculous. But James Horton may not be irrational. Instead, he may be a Sovereign Citizen, a member of a "common-law" movement that uses many of the same arguments developed by the Posse Comitatus and tax protestors.<sup>7</sup> In doing so, the movement's members create headaches for the legitimate system, both by their voluminous and complicated pleadings and through their use of tactics such as common-law liens to harass judges and other public officials.

This Comment describes the legal framework of the Sovereign Citizen movement with a view toward preparing court personnel to recognize and respond to Sovereign Citizen litigants. Part I places the Sovereign Citizens in a historical context, tracing the origins of their legal theories and tactics from the Posse Comitatus through tax protestors, the Patriot movement, and common-law courts. Part II analyzes Sovereign Citizen legal arguments regarding citizenship, legal rights, jurisdiction of courts, and constitutional interpretation to demonstrate that they form a complex and internally cohesive structure that provides the movement's adherents with an intellectual alternative to mainstream law. Part III examines the legitimate system's response to Sovereign Citizen litigants and suggests additional responses. James Horton and his fellow Sovereign Citizens represent the intersection of four movements: the Posse Comitatus, tax protestors, Patriots, and the common-law courts. Understanding the mindset, legal theory, and tactics of the Sovereign Citizens requires an excursion into the background and theories of each of these movements.

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<sup>2</sup> See *City of Belton v. Horton*, 947 S.W.2d 104, 105 (Mo. Ct. App. 1997).

<sup>3</sup> Much of the writing of the Sovereign Citizen Movement contains erratic spelling and grammar. As a result, this Comment has reserved "[sic]" for only the most blatant of these errors in its quotations.

<sup>4</sup> See *Horton*, 947 S.W.2d at 105

<sup>5</sup> See *id.*

<sup>6</sup> See *id.* at 106.

<sup>7</sup> The term "Sovereign Citizen" first appears in a 1978 case, *Johnson v. Commissioner*, 37 T.C.M. (CCH) 189, 190 (1978) (rejecting Johnson's claim that an individual sovereign citizen is not subject to federal income tax). Coherent Sovereign Citizen legal theory does not begin to appear until the early 1990s.

# I. Historical Context and Structure of the Sovereign Citizen Movement

## A. The Posse Comitatus

Like many of the legal theories discussed in this Comment, the Posse Comitatus grew from a common-law concept.<sup>8</sup> The modern Posse was a radical group based primarily in the American midwest whose members claimed the right to defend the U.S. Constitution, forming their own courts and arresting public officials who were acting unconstitutionally.<sup>9</sup> Its members rejected all authority higher than the county sheriff, accepted only the first twelve Amendments as legally binding, and believed that an international Zionist conspiracy had taken control of the U.S. government.<sup>10</sup> Many members belonged to Christian Identity, a radical Christian sect that preaches white supremacy, racial separation, and anti-Semitism.<sup>11</sup> Members of the Posse argued that "the government is nothing but an expansion of the Christian church," the Bible is the source of the Constitution, and God himself establishes law.<sup>12</sup>

The Posse was founded in 1969, but it reached the height of its strength during the farm crisis of the 1980s.<sup>13</sup> A combination of factors, including the embargo of grain exports to the Soviet Union, falling land values, and rising interest rates, forced many farm families into bankruptcy.<sup>14</sup> The Posse's legal theories - presented in seminars - claimed farmers could refuse to pay taxes on constitutional grounds and keep federal agents from seizing their land.<sup>15</sup> Posse leader Roderick Elliot, a former dairy farmer, conducted constitutional law seminars that advised farmers to file pro se lawsuits against lenders and the Federal Reserve to void loans, earn damages, and clog the courts to prevent foreclosures.<sup>16</sup> Other Posse leaders taught farmers to file common-law liens<sup>17</sup> against the personal property of bankers, IRS

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<sup>8</sup> See 70 Am. Jur. 2d Sheriffs, Police, and Constables 60 (1960). "The sheriff's authority to command assistance from the immediate able-bodied, sometimes called a posse comitatus, or power of the county, was part of his common-law duties, which came along as an ancient function of the office." Id.

<sup>9</sup> See *United States v. Hart*, 701 F.2d 749, 750 (8th Cir. 1983). Common law prohibits citizens from organizing a posse comitatus. See *United States v. Hart*, 545 F. Supp. 470, 474 (D.N.D. 1982), aff'd, 701 F.2d 749 (8th Cir. 1983).

<sup>10</sup> See Catherine McNicol Stock, *Rural Radicals: Righteous Rage in the American Grain* 171 (1996). "Thus if they were to comply with any federal regulation - from paying taxes to making social-security payments or honoring fish and wildlife regulations or even getting a driver's license - they would be complicit in an international conspiracy." Id.

<sup>11</sup> See Morris Dees & James Corcoran, *Gathering Storm: America's Militia Threat 18-24* (1996) (describing theological structure and outreach efforts of Christian Identity pastors). Anti-Semitism was a recurring theme in the Posse's beliefs, as it is in the belief structures of many Patriot groups. In a theme echoed by the Sovereign Citizen movement, the Posse urged people to reclaim their personal sovereignty by returning all government documents because they legitimized "Jewish fables." See James Corcoran, *Bitter Harvest: Gordon Kahl and the Posse Comitatus, Murder in the Heartland* 27 (1990) [hereinafter Corcoran, *Bitter Harvest*].

<sup>12</sup> Corcoran, *Bitter Harvest*, at 26 (quoting William Potter Gale, a California Posse leader).

<sup>13</sup> See id. at 29. The FBI identified 78 Posse chapters in 1975. See id.

<sup>14</sup> See McNicol Stock, *supra* note 10, at 156-63. Many had taken out adjustable-rate loans based on the value of their farmland. See id. at 157. In the early 1980s, interest rates reached 22 %, while land values in some areas fell from \$ 2,100 an acre to \$ 700 an acre. See id.; Corcoran, *Bitter Harvest*, *supra* note 11, at 9. In 1983, the nation's farm debt was more than \$ 215 billion. See id. at 19. In 1987, nearly 17% percent of rural Americans lived in poverty. See id.

<sup>15</sup> See Catherine McNicol Stock, *Rural Radicals: Righteous Rage in the American Grain* 171 (1996), at 171

<sup>16</sup> See Corcoran, *Bitter Harvest*, at 32-33. Among other things, Elliot taught that loans written after 1974 were invalid because they violated the Truth in Lending Act. See id.

<sup>17</sup> A common-law lien is "the right of one person to retain in his possession that which belongs to another until certain demands of the person in possession are satisfied. Liens which have been recognized at common law are in favor of such persons as innkeepers, farriers, carriers, and warehousemen ...." *United States v. Hart*, 545 F. Supp. 470, 474 n.9 (8th Cir. 1983).

agents, sheriff's deputies, and other public officials.<sup>18</sup> Often, these liens went undiscovered until the owner attempted to sell or mortgage the property. Ex-Posse members, common-law courts, and individuals continue to use this tactic today.<sup>19</sup>

The Tigerton, Wisconsin, chapter of the Posse Comitatus was one of the most active. Its members established the breakaway township of Tigerton Dells and claimed the power to create their own court and administrative systems and issue liquor licenses.<sup>20</sup> Most of the group's leaders are in prison, and state officials seized the Tigerton compound land in 1985.<sup>21</sup> A successor group, Family Farm Preservation (FFP), sold more than 900 packets of bogus blank money orders that purchasers, including members of the Republic of Texas movement, tried to redeem for more than \$ 64 million.<sup>22</sup> FFP leader Thomas Stockheimer, a former Posse member, received a fifteen-year federal prison sentence for his role in the scheme.<sup>23</sup>

## B. Tax Protestors

In contrast to the Posse Comitatus, the unstructured tax protestor movement has no common theological,<sup>24</sup> philosophical, or racial beliefs that lend it cohesion. Nevertheless, it is relevant to understanding the Sovereign Citizens because many of them litigate using tax protestor theories.

The intellectual framework of the tax protestor movement comes mainly from for-profit theorists.<sup>25</sup> Irwin Schiff, a notorious tax protestor, wrote several books on how to avoid paying federal income tax and appeared on "Larry King Live," "Tomorrow," and more than 500 radio and television shows.<sup>26</sup>

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<sup>18</sup> See Corcoran, *Bitter Harvest*, at 33-34 (describing the activities of Posse Comitatus member Douglas Hart, who filed common-law liens against North Dakota IRS agents after they audited his income taxes).

<sup>19</sup> See, e.g., *United States v. Knudson*, 959 F. Supp 1180, 1185-88 (D. Neb. 1997) (granting injunction against tax protestor who had filed retaliatory liens against the property of IRS agents).

<sup>20</sup> See *State v. Wickstrom*, 118 Wis. 2d 339, 343-44, 348 N.W.2d 183, 186 (Wis. Ct. App. 1984) (affirming Posse member's conviction on counts of violating Wisconsin statutes that forbid impersonating public officials). Claiming to be both the town clerk and municipal judge of Tigerton Dells, Wickstrom threatened the Shawano County clerk with a lawsuit for failing to provide ballots for township elections. See *id.* Wickstrom and tavern owner Donald Minniecheske founded the township after Minniecheske was unable to get a liquor license. See Richard W. Jaeger, *Organization Grew Quickly: Posse Started in 1974 as DNR Protest Group*, Wis. St. J., Feb. 5, 1994, at 2A.

<sup>21</sup> See Andrew Blasko, *Posse Comitatus Can't Sue Village Without OK, Supreme Court Finds*, Wis. St. J., May 21, 1997, at 3B. In 1993, Tigerton bought the Posse compound for \$ 102,000 in back taxes and turned it into a park. See Susan Lampert Smith, *Tigerton Overcomes Notorious Past*, Wis. St. J., Mar. 23, 1997, at 8A.

<sup>22</sup> See Richard W. Jaeger, *Group Uses Law as its Weapon*, Wis. St. J., May 22, 1994, at 10A; Thomas Korosec, *We Are the R.O.T.*, *Dallas Observer*, May 8, 1997. This tactic is not unique to FFP. Purveyors of a Texas scheme sold blank "Certified Money Orders" backed by fraudulent liens with the following instructions: "Warning: Just like the children's story about the emperor's new clothes, do not mention that your current credit money, the negotiable instrument, is pretend money. Only speak of the bank's negotiable instruments as being pretend money." *United States v. Mikolajczyk*, 137 F.3d 237, 239-40 (5th Cir. 1998).

<sup>23</sup> See *Former Posse Leader Gets 15 Years*, Wis. St. J., Apr. 10, 1997, at 3C.

<sup>24</sup> Some tax protestors claim that religion prohibits them from paying taxes. See, e.g., *McLaughlin v. Commissioner*, 832 F.2d 986, 987 (7th Cir. 1987) (holding that religious scruples against "entering into contracts with inhabitants of the land," a reference to Old Testament prohibitions against dealing with Caananites, did not excuse payment of income tax). Similar language appears in non-tax protestor pleadings. See, e.g., *State v. Davis*, 745 S.W.2d 249, 250 (Mo. Ct. App. 1988) (dismissing Davis's claim that religion forbade him from "covenanting" with anyone but God and thus from obtaining a driver's license).

<sup>25</sup> See *United States v. Sloan*, 939 F.2d 499, 502-03 (7th Cir. 1991) ("We are less sure of the sincerity of the professional tax protestors who promote their views in literature and meetings to persons like Mr. Sloan, yet are unlikely ever to face the type of penalties incurred by him.").

<sup>26</sup> See *Newman v. Schiff*, 778 F.2d 460, 462 (8th Cir. 1985). During one television appearance, Schiff promised to pay \$ 100,000 to any listener who could prove that the Internal Revenue Code required them to file a tax return. A Missouri attorney tried to,

Another book, *The Law That Never Was*, figures prominently in tax protestor appeals because of its argument that the Sixteenth Amendment was never legally ratified and thus nobody has to pay income tax.<sup>27</sup> In some cases, even attorneys rely on these arguments.<sup>28</sup>

Most tax protestors appear *pro se*, even if they are using the ideas of the for-profit theorists.<sup>29</sup> Like the farmers who used the *Posse Comitatus* theories, some appear to be simply too poor to afford an attorney and thus must represent themselves.<sup>30</sup> Others, for reasons that are unclear to the author, appear to be looking for trouble with the IRS.<sup>31</sup> Whatever the origins of the protestors' actions, courts repeatedly express frustration with the poorly written and sometimes incoherent pleadings.<sup>32</sup>

Nonetheless, several consistent themes emerge from tax protestor cases. The Seventh Circuit has identified standard tax protestor arguments, including challenges to the ratification and constitutionality of the Sixteenth Amendment, Fifth Amendment challenges under the takings and self-incrimination clauses, challenges to the constitutionality of the tax laws themselves, and claims that wages are not income and that Federal Reserve Notes are not cash or income.<sup>33</sup>

### C. Patriot Movement/Militias

Many Sovereign Citizens identify with the Patriot movement, a loosely organized group whose members believe that the federal government has become tyrannical in its attempts to control citizens' lives in areas such as taxation, environmental regulation, gun ownership, and constitutional liberties.<sup>34</sup> Both

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but Schiff did not pay up. The attorney sued for breach of contract, but the Eighth Circuit held that he had not accepted Schiff's offer because he had watched a taped broadcast of the show that aired the following day. See *id.* at 462-64.

<sup>27</sup> See *United States v. Sato*, 704 F. Supp. 816, 819 (N.D. Ill. 1989); *United States v. Thomas*, 788 F.2d 1250, 1253 (7th Cir. 1986); *Miller v. United States*, 868 F.2d 236, 241 (7th Cir. 1989).

<sup>28</sup> See, e.g., *Charczuk v. Commissioner*, 771 F.2d 471, 476 (10th Cir. 1985) (assessing fees and costs against an attorney who had twice previously presented identical meritless arguments to other courts).

<sup>29</sup> See, e.g., *United States v. Gerads*, 999 F.2d 1255, 1255 (8th Cir. 1993); *Sloan*, 939 F.2d at 499; *United States v. Saunders*, 951 F.2d 1065, 1065 (9th Cir. 1991); *Miller*, 868 F.2d at 236; *McLaughlin*, 832 F.2d at 986.

<sup>30</sup> See, e.g., *Gerads*, 999 F.2d at 1256 (imposing sanctions for frivolous argument on farm couple who had not paid taxes on farmland since 1976).

<sup>31</sup> See, e.g., *Miller*, 868 F.2d at 237-238 ("This appeal arises from Miller's third attempt to challenge the constitutionality of the entire federal income tax structure. The genesis of the present action is Miller's 1984 tax return, in which he chose not to provide any information regarding his income. Instead, Miller entered either the word 'None' or a double asterisk (\*\*\*) after each question on the return. Miller also typed a note on the return, explaining that the double asterisks signified his 'specific objection to the question under the 5th Amendment U.S. Constitution,' and 'similar objections under 1, 4, 7, 8, 9, 10, 13 & 14th Amendments.' Miller also typed on the return that 'new evidence, Certified and Documented, Shows the 16th Amendment was never legally passed. This means the whole Form, The IRS, and income tax Structure is Fraudulent and Illegal, doesn't it? Please Advise!").

<sup>32</sup> See *United States v. Cheek*, 882 F.2d 1263, 1268 n.2 (7th Cir. 1989) (noting that the Seventh Circuit would never consider such beliefs objectively reasonable for a good-faith misunderstanding defense to the charge of willful failure to file federal income tax returns). The footnote cynically concludes, "We have no doubt that this list will increase with time." *Id.*

<sup>33</sup> It has. A list of standard tax protestor arguments now includes the following: Income taxes are voluntary, see *Gerads*, 999 F.2d at 1256; people who receive no benefits or privileges from the government of the United States are not required to pay federal income tax, see *McLaughlin*, 832 F.2d at 987; wages are bartered for labor and thus deductible because they are "an equal, nontaxable exchange of property rather than taxable income," *Casper v. Commissioner*, 805 F.2d 902, 904-05 (10th Cir. 1986); and the IRS has not complied with the Paperwork Reduction Act, see *United States v. Hicks*, 947 F.2d 1356, 1358 (9th Cir. 1991), vacated by *Alexander v. United States*, 506 U.S. 808 (1992).

<sup>34</sup> See Chip Berlet & Matthew N. Lyons, *Citizen Militias Can Become Violent*, in *The Militia Movement* 59, 60-61 (Charles P. Cozic, ed., 1997). One commentator has described four central ideas of the Patriot movement: belief in a revocable social contract in which "The People" have delegated power to the central government; belief in a sovereign power located in "The People" that can be reclaimed; belief in the individual right to bear arms; and belief in the right to revolt against the federal

Patriots and commentators disagree about who belongs to the movement and what its purposes are. Morris Dees, for example, believes that the Patriot movement is composed of groups that range from militants, such as militias and Christian Identity supporters, to moderates, such as the John Birch Society and 700 Club followers who believe that the United States government is attempting to impose a "New World Order" on American citizens.<sup>35</sup> Other commentators emphasize the extreme white supremacist and anti-Semitic views of some Patriot organizations such as the Liberty Lobby.<sup>36</sup>

Nonetheless, it is clear that not all Patriots are militia supporters, nor are all militia supporters or Patriots linked to the racist right.<sup>37</sup> Many Patriots eschew violence and profess horror at incidents like the 1995 Oklahoma City bombing.<sup>38</sup> There is no central Patriot coordinating committee, no widely accepted statement of beliefs, and no agreement about terminology.<sup>39</sup> A 1997 Southern Poverty Law Center report identified six militia groups and nineteen other groups that support the Patriot movement operating in Wisconsin.<sup>40</sup>

## D. Common Law Courts: Patriot Institutions

Many Sovereign Citizens also participate in the common-law courts movement. Common-law courts are courts organized at the local level outside the recognized judicial system that purportedly apply principles of common law to resolve disputes and adjudicate criminal matters. Like similar courts developed by the Posse Comitatus,<sup>41</sup> common-law courts meet in private homes or community gathering-places such as bingo halls, restaurants, or bowling alleys. Some courts act as instruments of harassment;<sup>42</sup> others appear to be sincere attempts by members to implement their beliefs by freeing themselves from state tyranny and holding public officials accountable to the people. One reporter described common-law courts as "the judicial arm of the Christian Patriot movement."<sup>43</sup> While this assertion is almost certainly false - the Patriot movement is too disorganized to have a clearly defined

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government. See Thompson Smith, *The Patriot Movement: Refreshing the Tree of Liberty with Fertilizer Bombs and the Blood of Martyrs*, 32 Val. U. L. Rev. 269, 300-313 (1997).

<sup>35</sup> See Morris Dees & James Corcoran, *Gathering Storm: America's Militia Threat* 18-24 (1996), at 30-31.

<sup>36</sup> See Daniel Junas, *Citizen Militias Threaten Democracy*, in *The Militia Movement* 67, 68-69 (Charles P. Cozic, ed., 1997). The Liberty Lobby is one of several organizations that operate under the umbrella of the Legion for Survival of Freedom. Others include the Institute for Holocaust Revisionism and Noontide Press. See *Liberty Lobby, Inc. v. Dow Jones & Co.*, 838 F.2d 1287, 1295 n.5 (D.C. Cir. 1988).

<sup>37</sup> See, e.g., Dees & Corcoran, at 200 (noting that 137 of the 441 militia groups and 368 Patriot groups existing between 1994 and 1996 had ties to the racist right).

<sup>38</sup> See Chip Berlet & Matthew N. Lyons, *Citizen Militias Can Become Violent*, in *The Militia Movement* 59, 60-61 (Charles P. Cozic, ed., 1997) at 59-60.

<sup>39</sup> See, e.g., Paul Brinkley-Rogers & Dennis Wagner, *Patriot Movement Gains Momentum, Desperation*, *Ariz. Republic*, Apr. 14, 1996, at A1 (discussing disagreement among Patriots over the term "freeman" and describing Patriot ideas as "esoteric and tangled").

<sup>40</sup> See Katherine M. Skiba, *Southern Poverty Law Center Tracks Right-Wing Activity: State Extremist Groups on the Rise*, *Report Says Wisconsin has 25 Organizations, Up Four from 1996*, *Officials Say*, *Milwaukee J. Sentinel*, Apr. 20, 1997, at 16. Wisconsin Attorney General James Doyle estimated that 200-300 Wisconsin residents are involved in these groups. See *id.*

<sup>41</sup> See *id.*

<sup>42</sup> See, e.g., *Farm Credit Bank of Wichita v. Powers*, 919 P.2d 31, 32-33 (Okla. Ct. App. 1996) (rejecting contention of "The Sovereign John Cleveland: Powers" that Our One Supreme Court had ruled that the district court lacked jurisdiction over a foreclosure proceeding).

<sup>43</sup> T.C. Brown, *Uncommon Justice: Common-Law Courts a Fast-Growing Forum for "Patriots" Battling the American Government and Legal System*, *Cleveland Plain Dealer*, Mar. 2, 1997, at 1A.

separation of powers or division of responsibilities - there is a strong connection between elements of the Patriot movement (including militias) and many common-law courts.<sup>44</sup>

The first Wisconsin common-law court appeared in 1995,<sup>45</sup> and former members of the Posse and Family Farm Preservation have promoted the formation of other Wisconsin common-law courts. KlanWatch has identified common-law courts in twelve Wisconsin counties,<sup>46</sup> and state law enforcement officials view the movement with concern.<sup>47</sup> Still, Wisconsin common-law courts are not particularly active.<sup>48</sup>

Common-law courts in other states are more active, particularly when it comes to intimidating public officials. When a Missouri judge refused to dismiss a speeding ticket given to a seventeen-year-old Sovereign Citizen, Our One Supreme Court ordered him to appear before a common-law court.<sup>49</sup> When the judge did not appear, the common-law court rendered a default verdict against him and ordered a \$ 10.8 million lien placed on his house.<sup>50</sup> Members of the common-law jury were tried and convicted under a Missouri law that bans the filing of common-law liens,<sup>51</sup> but the convictions were reversed on

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<sup>44</sup> See Brad Knickerbocker, *New Militia Tactic: 'Paper Terrorism,'* Christian Sci. Monitor, Oct. 15, 1997, at 1. The ADL estimates that half of all common-law court members also belong to a militia in some parts of the country. See ADL Releases Report on Militia Activity, U.S. Newswire, Apr. 17, 1997. Several Ohio common-law court members have strong ties to militias. A police officer attempted to stop Michael Hill, a judge of Ohio's "Our One Supreme Court," who was driving with a license plate that read, "Ohio Militia 3-13 Chaplain." Hill drove off, then stopped and pulled a gun on the officer, who shot him dead. See T.C. Brown, *Martyr for the Cause*, Cleveland Plain Dealer, June 23, 1996, at 6. Some Wisconsin common-law courts claim similar connections. Rule 6 of Our Supreme Court of Wisconsin provides, "Our Supreme Court special terms will be enforced by militia protections vi et armis to prevent miscarriage of Justice ...." Public Notice: Affidavit of Publication, *Manawa Advocate*, June 8, 1995, at 21. Don Treloar, a justice of the court, was convicted of impersonating a U.S. marshal when he tried to serve court papers on a Green Bay IRS agent. See Dave Daley, *Man Impersonated U.S. Marshal, Jury Finds He Went to the Home of an IRS Agent to Help Serve 'Common Law Court' Papers*, Milwaukee J. Sentinel, July 1, 1998, at 3. Once head of the Christian Militia of Wisconsin, Treloar had previously said, "We extensively cover Wisconsin, and there are no places that are not protected by the militia in Wisconsin," a claim not supported by independent investigation. Katherine M. Skiba, *Militia Leader Explains Group's Focus: Anti-Abortion, Pro-Gun Stance Is Consistent with Constitution, Treloar Says*, Milwaukee J. Sentinel, Apr. 22, 1996, at 6.

<sup>45</sup> See Richard W. Jaeger, *New People's Court Forming: Rejects Link to Militant Groups*, Wis. St. J., May 7, 1995, at 8A. The court was formed in the Grant County village of Dickeyville; its justices were a retired farmer, an employee of a mail-order company, and a mill owner. Grant County had been home to the Posse's Christian Citizens Grand Jury, and Family Farm Preservation helped to set up the common-law court. The justices, however, disavowed any Posse connections and claimed that they would work within the existing legal system. See *id.*

<sup>46</sup> See Katherine M. Skiba, *Southern Poverty Law Center Tracks Right-Wing Activity: State Extremist Groups on the Rise*, at 16. The counties are Columbia, Crawford, Grant, Juneau, LaCrosse, Milwaukee, Manitowoc, Portage, Shawano, Taylor, Trempealeau, and Waupaca.

D. Common-Law Courts: Patriot Institutions

<sup>47</sup> See *id.*

<sup>48</sup> See Roy R. Korte, *Common Law Movement in America 7* (unpublished materials supporting presentation at Libraryfest Midwest, Milwaukee, Wisconsin, on Oct. 8-10, 1998) (on file with the University of Wisconsin Law Library). A LaCrosse common-law court did, however, order an assistant prosecutor to appear before it at an Embers restaurant after he prosecuted a LaCrosse dentist for state tax evasion. See Katherine M. Skiba, *Extremists Take Up the Gavel: Common-Law Courts Issue Subpoenas, Liens, and Threats, Officials Say*, Milwaukee J. Sentinel, Oct. 29, 1995, at 1. Similarly, after a Cedar Rapids, Iowa, Assistant U.S. Attorney indicted 11 people on mail fraud and money laundering charges in 1995, the "Supreme Law Court" summoned him to appear at a Topeka, Kansas, Texaco truck stop. He declined. See Michael Janofsky, *Home-Grown Courts Spring Up as Judicial Arm of the Far Right*, N. Y. Times, April 17, 1996, at A1.

<sup>49</sup> See Judy L. Thomas, *Hard-Line Approach Used on Extremists: Common-Law Lien Becomes Felony for 15 of 'Missouri 20,'* Kansas City Star, Aug. 18, 1997, at A1 [hereinafter Thomas, *Hard-Line Approach Used on Extremists*].

<sup>50</sup> See *id.*

<sup>51</sup> See *id.* Of the 15 defendants convicted, two received seven-year prison terms, and the rest received two-year terms. See *id.*

grounds unrelated to the merits of the case.<sup>52</sup> Ohio judges have faced similar harassment from an Ohio version of Our One Supreme Court, which meets in a Columbus bingo hall.<sup>53</sup>

Common-law courts in other states have attempted to hold public officials accountable to their standards. The Kansas Territorial Agricultural Society, a common-law court linked with the Posse Comitatus, found U.S. District Judge J. Thomas Marten "guilty and indicted" at a 1997 Abilene meeting and ordered him to appear before the "Constitutional Court" for an impeachment trial.<sup>54</sup> The court met again in the old Supreme Court chambers in Topeka several weeks later, and a ten-man jury impeached Marten on charges of holding a rogue court, kidnapping and blackmail, taking property, and extortion.<sup>55</sup> Legislators blocked the group's subsequent attempt to return to the chambers to impeach other judges, try the Kansas Attorney General for holding office illegally, and try the Shawnee County sheriff for refusing to arrest Bill Graves, whom the court claimed was impersonating the Governor of Kansas.<sup>56</sup> Similar activities have occurred in Indiana and Nebraska.<sup>57</sup>

## E. Common Threads

The behavior of each of these groups takes a baffling form. There are, after all, easier ways to show dislike of a Federal judge than by indicting him, trying him in absentia, and denouncing him to the U.S. House of Representatives. Did the Kansas Territorial Agricultural Society believe that its process was legitimate and would produce results? Does a tax protestor who files a return with the notation, "This means the whole Form, The IRS, and income tax Structure is Fraudulent and Illegal, doesn't it?"<sup>58</sup> expect the IRS to answer affirmatively? Did the bankrupt farmers who attended Posse seminars believe that they were filing legitimate lawsuits?<sup>59</sup> What did James Horton think would happen when he drove without a license plate?

Like the Sovereign Citizens, whose legal theories are examined in the following Section, members of each of these groups display contradictory attitudes towards the federal government and its institutions. Their philosophies call for a rejection of an overreaching central government and (in most cases) a return to control at the local level, but they pursue these theories in the courts and administrative agencies of the central government. Much of this seeming contradiction may stem from origins of the legal theories in the work of for-profit theorists.

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<sup>52</sup> See Judy L. Thomas, *Lien Case Convictions Reversed*, *Kansas City Star*, July 8, 1998, at A1 [hereinafter Thomas, *Lien Case Convictions Reversed*]. The Missouri Court of Appeals reversed 13 of the 15 convictions on procedural grounds. See *id.*

<sup>53</sup> See Eileen Dempsey and Jill Riepenhoff, *Outside the System*, *Columbus Dispatch*, Dec. 17, 1995, at 4B.

<sup>54</sup> See Grace Hobson, *A Capitol Trial for 'Common-Law' Court: Group Will Hold Proceedings in the Kansas Statehouse*, *Kansas City Star*, Aug. 5, 1997, at A1.

<sup>55</sup> See Grace Hobson, *'Common-Law' Court Votes for Judge's Removal: Next on the List are Kansas' Legislature and its Governor*, *Kansas City Star*, Aug. 9, 1997, at C3.

<sup>56</sup> See *id.*; *Kansas Impostors Rightly Rebuffed*, *Omaha World-Herald*, Sept. 21, 1998, at 16. Graves was the elected Governor of Kansas at the time.

<sup>57</sup> See Sarah Hanson, *Disgruntled Citizens Turn to Common-Law Court; Kosciusko County Venue 'Indicts' Office-Holders, Alleging Current Oaths of Office are Not on File*, *Indianapolis Star*, July 29, 1996, at B01; *Nebraska Legislature Summary*, *Omaha World Herald*, Mar. 6, 1996, at 19.

<sup>58</sup> *Miller v. United States*, 868 F.2d 236, 238 (7th Cir. 1989).

<sup>59</sup> One does not, after all, think of midwestern farmers as a radical group intent on toppling the legal structure.

## II. Legal Theories of the Sovereign Citizen Movement

Sovereign Citizens - so called because their legal theories are based upon an assertion of personal sovereignty - present a serious problem for overburdened courts responsible for giving a fair hearing to all claimants. Like their philosophical predecessors,<sup>60</sup> Sovereign Citizen legal theorists appear to have studied the law in great detail. Although many are poorly educated, they buy legal books and study them with the intent to become learned in the law, and their writings reflect the breadth of their study.

<sup>61</sup> Pleadings filed in Sovereign Citizen litigation cite a staggering range of case law: A downloadable Sovereign Citizen brief addressing the right to drive without a state-issued driver's license takes up thirty-four printed pages and cites eighty cases as well as the Yale Law Journal, Blackstone's Commentaries, and the Corpus Juris Secundum. <sup>62</sup> The author of the on-line Dixieland Law Journal, a Sovereign Citizen adherent, exhaustively analyzes the history of Norman and pre-Conquest England to refute the proposition that Sovereign Citizens must present their names in a certain format to retain personal sovereignty. <sup>63</sup> Analyses of other issues are similarly detailed, even if the writing is ungrammatical, the style overexcited, and the logic presented in a confusingly non-linear pattern. <sup>64</sup>

The resulting pleadings are dense, complex, and virtually unreadable. Faced with mountains of paperwork, courts must choose between spending hours deciphering Sovereign Citizen arguments or dismissing them out of hand. In an attempt to lighten this burden, this Section explains the main tenets of Sovereign Citizen legal theory, which are summarized in the claim that the federal government has

"fundamentally" changed the form and substance of the "de jure" Republican form of Government, exhibited a willful and wanton disregard for the Rights, Safety, and Property of others, evinced a despotic design to reduce the People to slavery, peonage and involuntary servitude, ... implemented foreign laws, rules, regulations, and procedures within the body of the Country, ... and retained those of Alien Allegiance to perpetuate their frauds and to eat out the substance of the good and productive

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<sup>60</sup> Although Sovereign Citizens have derived aspects of their legal theories from Posse Comitatus theory, many reject the theological and racist underpinnings of Posse Comitatus and Patriot ideologies. See The Frog Farm FAQ (last modified July 27, 1995) <http://www.the-enclave.net/p283.htm> [hereinafter Frog Farm]. Some analysts of the movement find a stronger theological underpinning. See Susan P. Koniak, When Law Risks Madness, 8 *Cardozo Stud. L. & Literature* 65, 71, 75-76 (1996) (arguing that the Christian Identity theology of the Posse Comitatus underlies the reasoning of the "Common Law" movement).

<sup>61</sup> See Phillip A. Hendges, An Analysis of: People, for Michigan Republic, ex rel v. State of Michigan, 30 *J. Marshall L. Rev.* 937, 937 (1997) (describing a farmer involved in the common-law movement who bought law books because he believed that "every county should have at least one lay person knowledgeable in the law"). See, e.g., Notice of National Emergency (visited Jan. 10, 1999) <http://www.ptialaska.net/swampy/powers/powers.1.html>. In nine printed pages (which are somewhat difficult to follow), this document cites case law, the U.S. Code and other statutory law, congressional testimony, U.S. Army field manuals, executive orders, the Federalist Papers, and the writings of Robert Bork and James Buchanan to prove that the current government is operating under "Foreign/Alien Constitutions, Laws, Rules, and Regulations." *Id.*

<sup>62</sup> See Plaintiff's Opening Brief (visited Oct. 29, 1998) <http://www.cs.cmu.edu/karl/govt/driver/driver.html> As a convenience for litigants, the webmaster allows visitors to download the brief in a word-processing format, thus making it easier to prepare and file the brief. Before word-processing software became commonly available, litigants would simply attach photocopied memoranda, sometimes without bothering to revise them to apply to their specific circumstances. See *Nixon v. Phillipoff*, 615 F. Supp. 890, 897 (N.D. Ind. 1985) (sanctioning plaintiff for filing a 34-page memorandum of law arguing for the continued validity of the gold standard; the motion was written from a defendant's perspective).

<sup>63</sup> See The Dixieland Law Journal (last modified Sept. 10, 1999) <http://fly.hiwaay.net/becraft>

<sup>64</sup> See *Cass v. R.J. Reynolds Tobacco Co.*, No. 1:97 CV01236, 1998 U.S. Dist. LEXIS 16723, at \*6 (M.D.N.C. Oct. 1, 1998) ("The Complaint in this matter is a rambling fount of senseless writing, from which no reasonable mind could extract a legitimate dispute. The underlying facts are obscure and the legal claims convoluted. The Complaint, by itself, lacks sufficient factual allegations for the court to wade through the ramblings in search of a possible legal theory.").

People of our land. They have arbitrarily dismissed and held mock trials for those who trespassed upon our lives, Liberties, Properties, and Families and endangered our Peace, Safety, Welfare and Dignity. <sup>65</sup>

### A. The "'Fundamentally' Changed Form and Substance of the 'De Jure' Republican Form of Government": <sup>66</sup> Sovereign and Federal Citizenship

At the heart of Sovereign Citizen legal theory is the belief that the government has created two forms of citizenship: sovereign (or de jure) citizenship and federal (or Fourteenth Amendment) citizenship. Sovereign Citizens are state citizens. Their "inalienable natural rights are recognized, secured, and protected by [the] state Constitution against State actions and against federal intrusion by the Constitution for the United States of America." <sup>67</sup> Terminology is important: A "state" is not the State of Wisconsin, which Sovereign Citizens argue is a "fictional federal "State within a state;" Sovereign Citizen "states" have identical borders, but they exist independently of the federal government and draw their sovereignty directly from their citizens. <sup>68</sup> Sovereign Citizens are United States citizens only in the sense originally intended by the Constitution, which is that the citizen of one state is to be considered and treated as a citizen of every other state. <sup>69</sup>

In contrast to Sovereign Citizenship, federal citizenship is much more limited. Federal citizenship was created by the Fourteenth Amendment, which, according to the Sovereign Citizens, created "a citizenship of the United States as distinct from that of the states." <sup>70</sup> Fourteenth Amendment citizenship is not based on race; rather, it is a class of persons who are "enfranchised to the federal government." <sup>71</sup> This class includes all federal employees and residents of the District of Columbia, Guam, and other areas of the United States that have not attained statehood. <sup>72</sup> More importantly, it includes those who

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<sup>65</sup> See Notice of National Emergency (visited Jan. 10, 1999) <http://www.ptialaska.net/swampy/powers/powers.1.html>.

<sup>66</sup> See Notice of National Emergency

<sup>67</sup> T. Collins, White Paper on State Citizenship (last modified Oct. 29, 1997) <http://www.netaxs.com/delcolib/whitepaperonstatecitizenship.htm>

<sup>68</sup> See id. Examples of Sovereign Citizen "states" include the "Kingdom of Hawai'i," see *State v. French*, 883 P.2d 644, 650 (Haw. Ct. App. 1994); the "Pennsylvania Commonwealth," see T. Collins, White Paper on State Citizenship (last modified Oct. 29, 1997) <http://www.netaxs.com/delcolib/whitepaperonstatecitizenship.htm> (distinguishing the "Pennsylvania Commonwealth" from the "Commonwealth of Pennsylvania," an illegally created federal zone); the "Republic of Texas," see *McLaren v. United States, Inc.*, 2 F. Supp. 2d 48, 49 (D. D.C. 1998); and the Washitaw Nation (a Louisiana entity that claims its members are aboriginal inhabitants of the United States who built the first pyramids and issues its own driver's passports, birth certificates, and auto registration), see Judy L. Thomas, *Hard-Line Approach Used on Extremists: Common-Law Lien Becomes Felony for 15 of 'Missouri 20,'* *Kansas City Star*, Aug. 18, 1997, at A1.

<sup>69</sup> See Scott Eric Rosenstiel, 14th Amendment Citizenship (visited Oct. 4, 1999) <http://www.civil-liberties.com/pages/art2.html> [hereinafter Rosenstiel, 14th Amendment].

<sup>70</sup> Id. (citing *Black's Law Dictionary* 657 (6th ed. 1990)). See also *Barcroft v. Commissioner*, 73 T.C.M. (CCH) 1666, at \*3 (1997) (claiming, "I am not a 'U.S. citizen,' subject to federal jurisdiction, such as 'officers, employees, and elected officials of the United States,' nor do I reside within a federal territory such as Washington D.C., or a federal enclave within a State, or a U.S. Possession.").

<sup>71</sup> T. Collins, White Paper on State Citizenship (last modified Oct. 29, 1997) <http://www.netaxs.com/delcolib/whitepaperonstatecitizenship.htm>

<sup>72</sup> See *United States v. Knudson*, 959 F. Supp. 1180, 1184 (D. Neb. 1997) (rejecting Knudson's argument that the federal government lacks jurisdiction outside Washington D.C.). According to some Sovereign Citizens, persons born in the District of Columbia are not eligible for the status of Sovereign Citizen. See T. Collins, White Paper on State Citizenship (last modified Oct. 29, 1997) <http://www.netaxs.com/delcolib/whitepaperonstatecitizenship.htm> (describing argument that only residents of Washington, D.C., and other federal enclaves are U.S. citizens).

have renounced their birthright of sovereign citizenship by entering into contracts with the government, receiving benefits from it, and thereby becoming subject to its jurisdiction.<sup>73</sup>

Because federal citizens have negotiated away (or, in the case of Washington, D.C., residents, never possessed) their sovereign rights, the federal government can regulate and tax the privileges they receive, such as the privilege of driving or the privilege of owning property.<sup>74</sup> Federal citizens are not protected by the Bill of Rights, although the Fourteenth Amendment itself grants them certain privileges and immunities, including "the right to pass freely from state to state ... the right to vote for national officers; the right to be protected against violence while in the lawful custody of a United States marshal; and the right to inform the United States authorities of violation of its laws."<sup>75</sup> Currently, federal citizens possess many of the same civil rights as Sovereign Citizens because Congress has granted them, but Congress can rescind them at any time.<sup>76</sup>

## B. "[A] Willful and Wanton Disregard for the Rights, Safety, and Property of Others"<sup>77</sup> : The Rights of the Sovereign Citizen

In general, Sovereign Citizens come into contact with the legitimate court system for offenses that are surprisingly ordinary. Most are not arrested for murder or grand larceny; rather, they appear in court for violating child support orders,<sup>78</sup> zoning regulations,<sup>79</sup> or traffic laws.<sup>80</sup> The willingness of Sovereign Citizens to engage in pitched legal battles over trivial matters suggests that they value their rights highly and creates problems for courts that are unprepared to devote substantial time and resources to matters that usually are resolved quickly. This Subsection outlines a few of the important rights.

Sovereign Citizens claim an inalienable right to travel; that is, the right to travel over public roads without the necessity need to register their cars, display license plates, obtain driver's licenses, or conform to traffic laws.<sup>81</sup> Sovereign citizens concede that the government has a right to require licenses

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<sup>73</sup> See infra Part II.C.

<sup>74</sup> See Collins, ("Privileges granted by the sovereign ... in their capacity to license.... what might otherwise be illegal are always taxable and regulatable. Rights such as those envisioned by the founding fathers are not taxable or regulatable because they are exercises of the common right that could be completely destroyed by government through taxation and/or regulation.").

<sup>75</sup> Scott Eric Rosenstiel, 14th Amendment Citizenship (visited Oct. 4, 1999) <http://www.civil-liberties.com/pages/art2.html> (citing *Twining v. New Jersey*, 211 U.S. 78 (1908) (citations omitted)).

<sup>76</sup> See T. Collins, White Paper on State Citizenship (last modified Oct. 29, 1997) <http://www.netaxs.com/delcolib/whitepaperonstatecitizenship.htm>

<sup>77</sup> Notice of National Emergency <http://www.ptialaska.net/swampy/powers/powers 1.html>

<sup>78</sup> See D.L. Bennett, Jailed "Freemen" Disciple Files for Release, Damages, Atlanta J. and Constitution, July 23, 1998, at 3JQ (common-law court activist jailed for eight months for refusing to pay more than \$ 12,000 in back child support).

<sup>79</sup> See Henry J. Cordes, Common-Law Adherents, York County Square Off, Omaha World Herald, May 9, 1996, at 1 (Sheriff's deputies arrested a Sovereign Citizen who violated county zoning regulations by placing four trailers on his farmland but refused to negotiate with county officials).

<sup>80</sup> See *Around Ohio*, Columbus Dispatch, Apr. 30, 1996, at 2C (Ohio Sovereign Citizen found guilty of obstructing a police officer after refusing to show his driver's license during a stop related to a burned-out headlight); Jim Woods, Two Common Law Activists Indicted in Escape, Columbus Dispatch, Apr. 18, 1996, at 3C (clerk of Ohio's Our One Supreme Court indicted for escape after evading arrest warrant for driving without a license). Some traffic stops may escalate into more serious crimes, of course. See Brinkley-Rogers & Wagner, supra note 38, at A1 (Arizona Sovereign Citizen claiming to be "absolute Native white male state and American Citizen of the People" tried to run over a Mesa police officer during a traffic stop for driving without a license plate).

<sup>81</sup> See *State v. Davis*, 745 S.W.2d 249, 252 (Mo. Ct. App. 1988) (upholding Davis's conviction for driving without a license despite his claim that he was only "traveling in a conveyance"); *State v. Kouba*, 319 N.W.2d 161, 161 (N.D. 1982) (dismissing Kouba's claim that he "has an inalienable right to drive upon the highways of North Dakota and therefore he does not need an operator's license issued by the state"). At least one Sovereign Citizen litigant has suggested that the right to drive is hereditary.

for vehicles driven in the "ordinary" use - vehicles driven for commercial purposes - but not to regulate vehicles driven in the "extraordinary," or personal, use.<sup>82</sup> Sovereign Citizens view traffic citations as violations of their constitutional rights based both on the right to travel and the belief that the common law recognizes only crimes that occur when there is damage to a person or property.<sup>83</sup>

Sovereign Citizens likewise consider the right to own property to be an inalienable right. This right has two important implications for Sovereign Citizen tax theory. First, the owner of real or personal property cannot be taxed simply for owning the property.<sup>84</sup> Taxes on real and personal property are government regulations that conflict with this inalienable right and therefore are unconstitutional.<sup>84</sup> Secondly, Sovereign Citizens own the labor of their own hands.<sup>85</sup> "No individual, group, or majority has a right to the labor, ideas, production, or property of a Free Sovereign Citizen, or any part thereof, without prior consent or agreement."<sup>86</sup> Thus, Sovereign Citizens echo the earlier (and unsuccessful) tax protestor argument that income tax is illegal because it is taxing wages received in return for labor.

Coupled with the inalienable right to own property is the inalienable right to defend it. The Second Amendment does not protect federal citizens regardless of where they live; they are not allowed to own handguns under District of Columbia law and must register any other guns.<sup>87</sup> Sovereign Citizens, on the other hand, enjoy the full protection of the Bill of Rights and thus can own guns and other weapons without hindrance.<sup>88</sup> As their frequent association with militias suggests, Sovereign Citizens consider the right to keep and bear arms an inalienable right not subject to regulation by the federal government or states.<sup>89</sup> This includes the right to defend themselves against aggression from any quarter, including the government: "Free Sovereign Citizens have the right to defend and protect themselves and their property against coercive aggression, and to contract with others to assist them. The authority of

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See *State v. Dempsey*, No. 86-0924- CR, 1987 Wisc. App. Lexis 3407, at \*7 (Wis. Ct. App. Jan. 26, 1987) (contending that 1804 travel laws applied to Dempsey because his great-great-grandfather was born in New York state at that time). True, the U.S. Supreme Court has found a constitutional right to travel. See *Shapiro v. Thompson*, 394 U.S. 618, 629 (1969) ("This Court long ago recognized that the nature of our Federal Union and our constitutional concepts of personal liberty unite to require that all citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement."). However, state requirements regarding vehicle registration and licensing of drivers are not unreasonable burdens or restrictions. See *Hendrick v. Maryland*, 235 U.S. 610, 622 (1915).

<sup>82</sup> See *Dowis v. State*, 501 S.E.2d 275, 276 (Ga. Ct. App. 1998) (rejecting Sovereign Citizen's claim that he was not required to have a driver's license "because he was using the highway in the extraordinary use"). This distinction between ordinary and extraordinary use and its resulting implications for federal sovereignty appears to be based on the Commerce Clause. See *State v. Crisman*, 846 P.2d 928, 929 (Idaho Ct. App. 1992) (upholding Crisman's conviction for driving without a license despite his claim that he intended to conduct only personal business on public highways).

<sup>83</sup> See The Frog Farm FAQ (last modified July 27, 1995) <http://www.the-enclave.net/p283.htm> "Free Sovereign Citizens consider a crime to occur only when there is a damaged person or property. Therefore, there is no such thing as a 'victimless crime,' and no Free Sovereign Citizen can commit a crime simply by disobeying the arbitrary rules of tyrants or coercive organizations." See Sovereign Services, Report #PCT07: Understanding Common Law (visited Jan. 8, 1999) <http://www.buildfreedom.com/tl/pct07.htm>

<sup>84</sup> See id.

<sup>85</sup> See id.

<sup>86</sup> See id.

<sup>87</sup> See T. Collins, White Paper on State Citizenship (last modified Oct. 29, 1997) <http://www.netaxs.com/delcolib/whitepaperonstatecitizenship.htm>

<sup>88</sup> See id.

<sup>89</sup> See Marguerite A. Driessen, Private Organizations and the Militia Status: They Don't Make Militias Like They Used To, 1998 B.Y.U. L. Rev. 1, 14-29.

voluntarily-chosen agents to defend or protect Citizens and/or their property is strictly limited to that defense or protection."<sup>90</sup>

Sovereign Citizens also believe that their status confers upon them "full civic right."<sup>91</sup> To them, this term means that a Sovereign Citizen has the inalienable right to hold any political office, including judicial offices generally reserved for lawyers.<sup>92</sup> For this and other reasons, Sovereign Citizens eschew the legitimate court system and turn instead to common-law courts that allow any Sovereign Citizen to serve as judge, prosecutor, defense counsel, or juror as long as he is not a lawyer.<sup>93</sup>

### C. "[A] Despotic Design to Reduce the People to Slavery, Peonage and Involuntary Servitude"<sup>94</sup> : The Contractual Nature of Federal Citizenship

Sovereign Citizens believe that the federal government has hidden the truth about the Fourteenth Amendment for 132 years because the people would revolt if they knew they had been relegated to an inferior federal citizenship. Still, Sovereign Citizens claim that the federal government has extended this inferior citizenship from its legitimate holders, the residents of the District of Columbia, to almost everyone. This Subsection describes how.

In an attempt to avoid participating in the social security system, John Valdejuli argued that the federal government creates an inferior class of citizenship through the use of contracts:

Plaintiff claims he was fraudulently induced into signing a "contract" with the Social Security Administration when he was eleven years old, and now he seeks to void that contract. Plaintiff also makes several additional allegations in his complaint, including the following: that he is not a citizen of the Federal United States, but a natural sovereign citizen of the United States not subject to the Social Security system; that it is unlawful for anyone to issue anything identifying him by his social security number; and that requiring Plaintiff to have a social security number denies him the right to work.<sup>95</sup>

Like many other Sovereign Citizens, Valdejuli argued that the federal government had fraudulently induced him to enter into a contract with it and that, by doing so, the government had relegated him to the status of federal citizen.<sup>96</sup> Sovereign Citizens see these contracts as the primary instrument by which the federal government usurps sovereign citizen status. Once the Sovereign Citizen contracts with the federal government, he unknowingly surrenders his personal sovereignty and agrees to be bound by the illegitimate federal law.

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<sup>90</sup> Sovereign Services, Report #PCT07: Understanding Common Law (visited Jan. 9, 1999) <http://buildfreedom.com/tl.pct07.html>

<sup>91</sup> Id. The term is taken from the Black's Law Dictionary (6th ed. 1990) definition of a "freeman" as "the appellation of a member of a city or borough having the right of suffrage, or a member of any municipal corporation invested with full civic right." Id.

<sup>92</sup> See id. Although recent practice has been to appoint attorneys, state judges, or law professors to the federal bench, federal law does not require a federal judge to be a member of the bar, to have practiced law, or to have graduated from law school. See 28 U.S.C. 133 (1994). Full-time U.S. magistrates must have been a member of the bar for at least five years before appointment. See 28 U.S.C. 631(b)(1) (1994). Wisconsin requires any judge to have been a member of the Wisconsin Bar for five years before election or appointment. See Wis. Const. art. VII, 24.

<sup>93</sup> The theory behind the exclusion of lawyers from common-law courts is discussed *infra*, Part II.E.

<sup>94</sup> Notice of National Emergency, <http://www.ptialaska.net/swampy/powers/powers.1.html>

<sup>95</sup> Valdejuli v. Social Sec. Admin., No. GCA 94-10051- MMP, 1994 WL 912253, at \*1 (N.D. Fla. Dec. 20, 1994).

<sup>96</sup> See id. at \*3.

As Valldejuli suggests, Sovereign Citizens see the social security system as one of the primary federal contracts. They view the social security system as a license granted to work in the United States (the federal United States, that is) under the Trading With the Enemy Act.<sup>97</sup> Applying for a social security number tells the federal government that the Sovereign Citizen is repudiating his state citizenship to apply for inferior federal citizenship and is prima facie evidence that the applicant has "voluntarily entered into a voyage for profit or gain in negotiable instruments and maritime enterprise."<sup>98</sup> In accepting a social security number that does not belong to him, the Sovereign Citizen has sold his birthright of freedom to the federal government.<sup>99</sup>

Under Sovereign Citizen legal theory, the Social Security Act was also the first step in creating federal zones within the states. They believe that the creation of ten social security districts that encompassed all the states created a fictional federal jurisdiction that extended to all living within them.<sup>100</sup> Other federal zones were created through the 1940 Buck Act<sup>101</sup> and the ZIP code program.<sup>102</sup> Interestingly, these are not physical zones. A Sovereign Citizen can reside within an area that is part of a social security district or that has a ZIP code, but he does not come under federal jurisdiction unless he contracts with the government to become part of it. The federal government can establish such a contract by getting the Sovereign Citizen to accept mail with a ZIP code or street address on it<sup>103</sup> or mail sent to general delivery with an improper state abbreviation.<sup>104</sup>

Similar problems pertain to personal names because Sovereign Citizens claim to believe that use of the wrong name can create a fictitious persona under the jurisdiction of the federal government. Each name used, even if the difference is an abbreviation or omission of a middle name, creates a different persona, and the consequences can be disastrous.<sup>105</sup> A name printed in all capital letters, for instance, creates a fictitious corporate persona, and someone who responds to a document addressed that way

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<sup>97</sup> See T. Collins, White Paper on State Citizenship (last modified Oct. 29, 1997)

<http://www.netaxs.com/delcolib/whitepaperonstatecitizenship.htm>

<sup>98</sup> 50 U.S.C. App. 1 et seq.

<sup>99</sup> Sovereign Citizens argue that the social security number does not belong to the holder because the name on the card creates a fictitious persona, the holder did not create the number, and the account cannot be closed.

<sup>100</sup> See T. Collins, White Paper on State Citizenship (last modified Oct. 29, 1997)

<http://www.netaxs.com/delcolib/whitepaperonstatecitizenship.htm>

<sup>101</sup> 4 U.S.C. 105-113 (1994) (defining the relationship between state and federal taxes). See also Collins, (discussing the Buck Act).

<sup>102</sup> See T. Collins, White Paper on State Citizenship (last modified Oct. 29, 1997)

<http://www.netaxs.com/delcolib/whitepaperonstatecitizenship.htm>

<sup>103</sup> See id. The Patrick Henry Foundation for Common Law Studies requires that "postal matter" be sent to: Greg Loren Durand; General Delivery; Perkinston Post Office; Perkinston, Mississippi.... All Postal Matter must be "addressed" exactly as requested above. Please do not write the name of this Ministry anywhere on the envelope, do not abbreviate any of the information, do not use all capitals, and do not include a zip code. All postal matter that does not comply with these instructions will be returned to the sender. The Patrick Henry Foundation for Common Law Studies, America Under Siege (visited Sept. 4, 1999) <http://www.ametro.net/crownrights/phf/WritRerum.htm>

<sup>104</sup> See Collins, "The fictional 'State' is identified by the use of two-letter abbreviations like 'PA', 'NJ', 'AZ', and 'DE', etc., as distinguished from the authorized abbreviations for the sovereign States: 'Pa.', 'N.J.', 'Ariz.', and 'Del.' The fictional States also use ZIP Codes that are within the municipal, exclusive legislative jurisdiction of Congress.... If you accept postal matter sent to PA, and/or with a ZIP Code, the Courts say that this is evidence that you are a federal citizen or a resident." Id.

<sup>105</sup> See Grace Hobson, "Common-Law' Court Votes for Judge's Removal: Next on the List are Kansas' Legislature and its Governor, Kansas City Star, Aug. 9, 1997, at C3. The prosecutor of the Kansas Territorial Agricultural Society professed confusion that the judge he was impeaching signed his name "Thomas Marten" and "J. Thomas Marten" and remarked, "It's a different person here now." Id.

accepts the characterization.<sup>106</sup> Some Sovereign Citizens further argue that names must be spelled with initial capitals only and with a comma or semicolon between the middle and last name.<sup>107</sup>

Sovereign Citizens identify additional fraudulent concerns. Any government-issued identification redefines the holder as a legal fiction because the government itself is a legal fiction.<sup>108</sup> Registering an automobile conveys ownership to the state and puts the former owner in the position of leasing the state's vehicle by paying the registration fee.<sup>109</sup> Registering children at birth - the process by which one receives a birth certificate - makes them "federal children" and forms a constructive trust in which the parents become the trustee, the child becomes an asset of the trust, and the state becomes the principal beneficiary of the trust.<sup>110</sup>

## D."Foreign Laws, Rules, Regulations, and Procedures Within the Body of the Country":

### <sup>111</sup> Admiralty Law and the Uniform Commercial Code

According to Sovereign Citizen theorists, the Constitution recognized three types of court jurisdiction: law, equity, and admiralty.<sup>112</sup> Jurisdiction in law refers to common law, which requires an injury to a person or property before a crime or tort is committed.<sup>113</sup> Equity jurisdiction requires a written contract.<sup>114</sup> Admiralty jurisdiction, once limited to the high seas, has illegitimately expanded to include international contract and has both civil and criminal penalties.<sup>115</sup> All federal district courts are courts of admiralty that are not bound by the Constitution when they sit in admiralty.<sup>116</sup> Statutory law, which is

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<sup>106</sup> See T. Collins, White Paper on State Citizenship (last modified Oct. 29, 1997)

<http://www.netaxs.com/delcolib/whitepaperonstatecitizenship.htm> This doctrine is convenient for those seeking to avoid subpoenas and other court documents in which parties' names appear entirely in capital letters. See, e.g., *Boyce v. Commissioner*, 72 T.C.M. (CCH) 788, 789 (1996) ("The objection also includes an objection to the spelling of petitioners' names in capital letters because they are not 'fictitious entities.'"); *George Hesselberg, Dentist Says Social Security Number is '666'*, Wis. St. J., Feb. 1, 1998, at 1G (describing a LaCrosse dentist's refusal to acknowledge a complaint that spelled his name in all capital letters).

<sup>107</sup> See Tom Jackman, "Freeman' Directed to Appear: Kansan Must Explain His Actions in Court in Oklahoma, Judge Says, Kan. City Star, July 18, 1996, at C4 (describing a U.S. Magistrate's rejection of the argument that a federal subpoena addressed to "Billy Joe Hanzlicek" should instead have been addressed to "Billy Joe, Hanzlicek"). A few tolerant courts allow this practice. See, e.g., *Maurice James; Dilouie v. Padova*, No. 97-6305, 1998 U.S. Dist. LEXIS 4196, at \*1 (E.D. Pa. March 19, 1998); *Eddie Bradford: Lee v. McClellan*, No. 3:97 CV355-P, 1997 U.S. Dist. LEXIS 20854, at \*1 (W.D.N.C. Nov. 18, 1997).

<sup>108</sup> See Resource Center, The Truth About ID Cards (visited September 4, 1999) <http://www.zekes.com/happy/scrc/why-id.htm>

<sup>109</sup> See T. Collins, White Paper on State Citizenship (last modified Oct. 29, 1997)

<http://www.netaxs.com/delcolib/whitepaperonstatecitizenship.htm>

<sup>110</sup> See id. As proof, Collins contends that birth certificates are sent to the Department of Commerce, then to an International Monetary Fund building in Europe so the child's future labor and properties can be used as collateral for the public debt. See id. Those inclined to quibble with the subtleties of Sovereign Citizen theory may note that birth certificates are issued by the state; Collins would reply that they are issued by the illegitimate "state" created by the federal government.

<sup>111</sup> Notice of National Emergency, <http://www.ptialaska.net/swampy/powers/powers.1.html>

<sup>112</sup> See James Montgomery, Where's the Water??? Admiralty on the Land (last modified Aug. 27, 1995)

<http://www.westworld.com/jahred/water.html>

<sup>113</sup> See Id

<sup>114</sup> See id. The fraudulent contracts discussed in the previous Section do not invoke equity jurisdiction; contracts between the United States and Sovereign Citizens are international contracts because the United States is a foreign corporation.

<sup>115</sup> See T. Collins, White Paper on State Citizenship (last modified Oct. 29, 1997)

<http://www.netaxs.com/delcolib/whitepaperonstatecitizenship.htm> passim. Mainstream law, however, claims that admiralty jurisdiction "extends over all contracts (wheresoever they may be made or executed, or whatsoever may be the form of the stipulations) which relate to the navigation, business, or commerce of the sea [and] comprehends all maritime contracts, torts, and injuries [although] the latter branch is necessarily bounded by locality." *De Lovio v. Boit*, 7 F. Cas. 418, 444 (C.C.D. Mass. 1815) (No. 3776).

<sup>116</sup> See James Montgomery, Where's the Water??? Admiralty on the Land (last modified Aug. 27, 1995)

<http://www.westworld.com/jahred/water.html>

antithetical to the Sovereign Citizen interpretation of common law because it imposes penalties for crimes that do not injure people or property, is enforced under admiralty jurisdiction.<sup>117</sup>

The court indicates its admiralty jurisdiction by flying a yellow-fringed military flag, thus signifying that the Constitution does not protect those who come before it because they are under the jurisdiction of a foreign power.<sup>118</sup> Judges who sit under such a flag and serve as the representative of a foreign power commit treason, giving cause to the offense of attempting by overt acts to overthrow the government of the state to which the alleged offender owes allegiance and of betraying the state into the hands of a foreign power .... The placement of yellow fringe on a title 4 U.S.C. 1 American flag is mutilation and is not representative of any county or constitution in the world creating a foreign power under the law of the flag within the sanctuary of the bar. The sanctuary is neutral foreign territory controlled by the law of the flag. Any flag not the ... American Flag of Peace will deny the U.S.A. [sic] proper party of all u.s. of A. [sic] constitutional rights without the due process of law. A proper party is injured by fraud ... because the actor judge is the supreme ruler of a foreign power jurisdiction without a constitution. The constitution of the united [sic] States of America would have protected the proper party before the court.<sup>119</sup>

Sovereign Citizen litigants argue that any action taken under the yellow-fringed "American flag of war" is a deprivation of due process because they are denied their constitutional rights.<sup>120</sup> When that fails, they invoke the "American flag of peace" (the standard, unfringed flag) in other ways:<sup>121</sup>

It has been this Court's experience that not only will all the papers submitted by this and similarly situated plaintiffs have the unoffending American flag of peace affixed to the first page, but in the event the plaintiff appears before the court, the plaintiff will also be personally adorned with the unoffending flag. The more demure plaintiffs settle for wearing a small flag pin on their collar or lapel. Other, more gregarious plaintiffs will place a desktop flag display on counsel's table or pin a large American flag of peace to their chest. Apparently, even though the courtroom may be displaying the offending yellow fringe flag, the plaintiffs' shrouding in the unoffending American flag of peace acts as a talisman of sorts

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<sup>117</sup> See T. Collins, White Paper on State Citizenship (last modified Oct. 29, 1997)

<http://www.netaxs.com/delcolib/whitepaperonstatecitizenship.htm> According to the Sovereign Citizens, any other action taken under admiralty jurisdiction is similarly illegal. See, e.g., *Nishitani v. Baker*, 921 P.2d. 1182, 1188 (claiming that "the State of Hawaii was created and evolved solely out of 'ADMIRALTY JURISDICTION,' thus exempting native-born Hawaiians from its jurisdiction.").

<sup>118</sup> See Collins. "Pursuant to U.S.C. Chapter 1, 2, and 3; Executive Order No. 10834, August 21, 1959, 24 F.R. 6865, a military flag is a flag that resembles the regular flag of the United States, except that it has a YELLOW FRINGE, bordered on three sides. The President of the United states [sic] designates this deviation from the regular flag, by executive order, and in his capacity as COMMANDER-IN-CHIEF of the Armed Forces." James Montgomery, Where's the Water??? Admiralty on the Land (last modified Aug. 27, 1995) <http://www.westworld.com/jahred/water.html>

<sup>119</sup> *Schneider v. Schlaefer*, 975 F. Supp. 1160, 1162 n.1 (E.D. Wis. 1997).

<sup>120</sup> See *id.*; see also *Dunkel v. McCloskey*, No. 97-3439, 1998 U.S. Dist. LEXIS 18802, at \*4-5 (E.D. Penn. Nov. 25, 1998); *Cass v. R.J. Reynolds Tobacco Co.*, No. 1:97 CV01236, 1998 U.S. Dist. LEXIS 16723, at \*6-7 (M.D.N.C. Oct. 1, 1998); *McCann v. Greenway*, 952 F. Supp. 647, 650-51 (W.D. Mo. 1997) (refuting the maritime flag of war argument); *Sadler v. Payne*, 974 F. Supp. 1411, 1413 (D. Utah 1997); *Nasir v. Anderson*, No. CIV.A. 96-4775, 1997 WL 567928, at \*2 n.2 (D. N.J. Aug. 25, 1997); *Leverenz v. Torluemlu*, No. 96 C 2886, 1996 U.S. Dist. LEXIS 8444, at \*2 (N.D. Ill. June 13, 1996); *Commonwealth v. Appel*, 652 A.2d 341, 343 (Pa. Super. Ct. 1994); *Huebner v. State*, No. 14-96-00925- CR, 1997 Tex. App. LEXIS 2452, at \*3 (Tex. App. May 8, 1997, no writ).

<sup>121</sup> See Mike Lafferty, Militia Member Jailed for Contempt of Court at Assault Trial, Columbus Dispatch, Apr. 24, 1996, at 1C.

to protect the plaintiff against jurisdictional conversion and somehow secure the plaintiff's "common law" constitutional rights.<sup>122</sup>

Under admiralty law, the Uniform Commercial Code (U.C.C.) has replaced the substantive common law.<sup>123</sup> The U.C.C. provides the basis for the federal government contracts that bind people into federal citizenship because, according to the Sovereign Citizens, it allows the government to enforce a contract based only on a party's acceptance of the benefits of the contract.<sup>124</sup> Thus, the federal government offers the benefit of driving on public roads to a Sovereign Citizen; by applying for a driver's license and receiving the benefit, the Sovereign Citizen has entered into a contract under the U.C.C. that obligates him to assume federal citizenship although he is unaware of the obligation.

According to the Sovereign Citizens, the U.C.C. also provides a way to disclaim the obligation. They claim it is possible to reserve rights in the common law under U.C.C. 1-207 and escape the trap of statutory jurisdiction:<sup>125</sup>

U.C.C. 1-207 gives you access to common law on any contract you sign using the policy stated in there. In court, what you are claiming is that you have reserved your common law right not to be compelled to perform under any contract that you have not entered knowingly, voluntarily, and intentionally. It also indicates that you do not accept the liabilities associated with the compelled benefits of any unrevealed agreement, such as becoming an accommodation party to the national debt in exchange for "social security benefits."<sup>126</sup>

Thus, Sovereign Citizens who fear contracting with the federal government will write "U.C.C. 1-207" on any materials involved, including driver's licenses, websites, and banknotes. A few Sovereign Citizens counsel avoiding the U.C.C. altogether because it is private law between merchants owned by an east coast law firm.<sup>127</sup>

## E. "Retaining Those of Alien Allegiance to Perpetuate Their Frauds and to Eat out the Substance of the Good and Productive People of Our Land":<sup>128</sup> Lawyers and the Original Thirteenth Amendment

Dislike of lawyers is hardly unique to the Sovereign Citizens, but their theories carry it to new extremes. Sovereign Citizens do not allow lawyers to practice in common-law courts because

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<sup>122</sup> Sadler, 974 F. Supp. at 1413 n.2.

<sup>123</sup> See T. Collins, White Paper on State Citizenship (last modified Oct. 29, 1997) <http://www.netaxs.com/delcolib/whitepaperonstatecitizenship.htm>

<sup>124</sup> See id.

<sup>125</sup> See Discussion Group (last modified Oct. 7, 1997) <http://www.geocities.com/CapitolHill/2278/mail/html> Neither the text of nor the comments to U.C.C. 1-207 mention the common law. For Sovereign Citizens, the relevant portion is the second paragraph of Comment 2, which reads, "This section is ... addressed ... to a method of procedure where one party is claiming as of right something which the other feels to be unwarranted." U.C.C. 1-207, cmt. 2 (1989).

<sup>126</sup> The Frog Farm FAQ (last modified July 27, 1995) <http://www.the-enclave.net/p283.htm>

<sup>127</sup> See Resource Center, The Truth About ID Cards (visited September 4, 1999) <http://www.zekes.com/happy/scrc/why-id.htm>

<sup>128</sup> Notice of National Emergency, <http://www.ptialaska.net/swampy/powers/powers 1.html>

lawyers are not citizens.<sup>129</sup> As members of the American Bar Association, a "private club from England,"<sup>130</sup> they spearhead a long-standing conspiracy to betray the U.S. to England.<sup>131</sup>

According to the Sovereign Citizens, the original Thirteenth Amendment, ratified in 1819, read as follows:

If any citizen of the United States shall accept, claim, receive, or retain any title of nobility or honour, or shall without the consent of Congress, accept and retain any present, pension, office, or emolument of any kind whatever, from any emperor, king, prince, or foreign power, such person shall cease to be a citizen of the United States, and shall be incapable of holding any office of trust or profit under them, or either of them.<sup>132</sup>

This amendment was actually proposed in 1810.<sup>133</sup> By 1812, it was one vote short of ratification.<sup>134</sup> Fearing passage of the amendment (according to the Sovereign Citizens), British interests provoked the War of 1812, during which they destroyed the Library of Congress in an attempt to obliterate it.<sup>135</sup> In 1819, when Virginia supposedly ratified it, British bankers attempted to destroy the state's economy.<sup>136</sup> Although the Thirteenth Amendment thus became law, a conspiracy of lawyers managed to keep it from becoming publicly known until the U.S. Civil War, when Abraham Lincoln permanently suppressed it as part of an agreement to keep Britain from entering the U.S. Civil War on the side of the Confederacy.<sup>137</sup>

Sovereign Citizens view the original Thirteenth Amendment as vital for two reasons. First, it excludes persons who hold titles of nobility from American citizenship.<sup>138</sup> Upon appointment to the bar, lawyers receive a title of nobility - "esquire" - that strips them of their citizenship.<sup>139</sup>

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<sup>129</sup> See Mike Lafferty, Disaffected Citizens Trying to Take Law into Their Own Hands, Columbus Dispatch, Dec. 17, 1995, at 1A.

<sup>130</sup> Theresa Myers, 'Common Law' Advocates Support Laws - Their Laws, Denver Post, Apr. 21, 1996, at B-01.

<sup>131</sup> See Judy L. Thomas, Lien Case Convictions Reversed, Kansas City Star, July 8, 1998,, at A1.

<sup>132</sup> David M. Dodge, The Missing 13th Amendment (last modified May 5, 1996)

<http://odur.let.rug.nl/usa/E/thirteen/thirteen1.htm>

<sup>133</sup> See Jol Silversmith, The Real Titles of Nobility Amendment FAQ (last modified June 19, 1997)

<http://www.nyx.net/jsilvers/nobility.html>

<sup>134</sup> See Id

<sup>135</sup> See Barefoot Bob, The Original Thirteenth Amendment: Titles of Nobility and Honour, An Essay (last modified Mar. 27, 1999)

<http://www.nidlink.com/bobhard/13essay.html>

<sup>136</sup> See Id

<sup>137</sup> See id. Lincoln also imposed a state of emergency that has never been lifted.

<sup>138</sup> See Anderson v. United States, No. 97 C 2805, 1998 U.S. Dist. LEXIS 7107, at \*7-8 (N.D. Ill. Apr. 24, 1998). Mr. Anderson claimed that no lawyer or member of Congress is a citizen of the United States because the penalty for violation of the "Original" Thirteenth Amendment ("claiming a title of nobility") is loss of citizenship. According to Mr. Anderson, since no member of Congress is a citizen, Congress is unable to enact any laws that have constitutional effect. Mr. Anderson argues that his civil rights were violated, along with the "Original" Thirteenth Amendment, because the court is a racist body that colludes with the Bar Association and Congress to violate citizens' rights. Mr. Anderson continues, stating that every licensed attorney is guilty of collusion, deceptive trade practices, fraud, and extortion. He then notes that "ALFRED THE GREAT HUNG FORTY-FIVE (45) JUDGES for placing their 'OPINIONS' above the law!" Id.

<sup>139</sup> See David M. Dodge, The Missing 13th Amendment (last modified May 5, 1996)

<http://odur.let.rug.nl/usa/E/thirteen/thirteen1.htm> Historically, the British peerage system referred to knights as "Squires" and to those who bore the knight's shields as "Esquires." As lances, shields, and physical violence gave way to the more civilized means of theft, the pen grew mightier (and more profitable) than the sword, and the clever wielders of those pens (bankers and lawyers) came to hold titles of nobility. The most common title was "Esquire." Id. In fact, "esquire" was considered a title of dignity (ranking above a gentleman but below a knight) or a title of office, not a title of nobility. See Black's Law Dictionary 546 (6th ed. 1990).

Second, it prohibits "honours." Sovereign Citizens argue that this prohibition would "ensure political equality among all American citizens, by prohibiting anyone, even government officials, from claiming or exercising a special privilege or power (an "honor") over other citizens." <sup>140</sup> Such a provision would eliminate immunities from lawsuits for judges and elected officials, and it would prohibit the passage of special interest legislation. <sup>141</sup>

## F. Reclaiming Sovereign Citizenship

The loss of Sovereign Citizenship is not permanent. Enslaved federal citizens can reclaim their sovereign status, but only by separating themselves from every benefit offered by the federal government as an inducement to contract. Required actions include filing a notice of intent to reclaim Sovereign Citizenship; filing a declaration of sovereignty, taking and filing an oath to one's state; <sup>142</sup> filing a notice that one is using Federal Reserve notes under protest (or better, not using them at all); <sup>143</sup> revoking driver's licenses, motor vehicle registrations, gun registrations, marriage licenses (but not the marriage contract), birth certificates, <sup>144</sup> application for a Social Security number, union memberships, status as

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<sup>140</sup> David M. Dodge, The Missing 13th Amendment (last modified May 5, 1996)

<http://odur.let.rug.nl/usa/E/thirteen/thirteen1.htm>

<sup>141</sup> See *id.* This argument is convenient for Sovereign Citizen litigants, who often sue judges, police officers, court clerks, and other public officials who are immune from suit under invalid federal law.

<sup>142</sup> Remember that the Sovereign Citizen "state" is distinct from the illegally created federal "states." See *supra*, Part II.A.

<sup>143</sup> Sovereign Citizens argue that Federal Reserve notes are fraudulent: "They are not notes because they do not promise to pay anything at a certain date. They can't be dollars because the word 'dollar' is a noun. A dollar is a word designating a unit of measure such as pound or quart. Therefore, the use of the word 'dollar' on a Federal Reserve Note really means a dollar's worth of nothing." *Barcroft v. Commissioner*, 73 T.C.M. (CCH) 1666, 1667 n.3 (1997). This Comment lacks space to address the claim that only gold and silver constitute legitimate currency. See, e.g., *Wikoff v. Commissioner*, 37 T.C.M. (CCH) 1539, 1539 (1978) (arguing that only gold and silver constitute legal tender and that the plaintiff should be able to report his income in terms of the "real value" of Federal Reserve notes).

<sup>144</sup> A sample affidavit of sovereign status runs as follows:

I (name), to Lawfully Affirm as follows this date: (date)

1. I am a NATURAL-BORN, FREE adult Citizen\* of the State of Wisconsin by birth, thus of Americansic, and an inhabitant of the State of Wisconsin; thankfully endowed by our Creator God with Inalienable Rights enumerated in America's founding organic documents, which I have never with knowingly intelligent acts waived; and I freely choose to obey all American Law and pay all Lawful taxes in jurisdictions applicable to me for the common good. I stand in Proper Person with Assistance, Special. The foregoing including my STATUS and Unalienable Rights, are not negotiable.

\*My status, in accord, is stated for all in 1:2:3, 2:1:5, 3:2:1, and 4:2:1 of the U.S. Constitution.

2. Recent diligent studies have convinced me of the above and that, as such, I am not "subject to" the territorially-limited "exclusive Legislation" and its foreign jurisdiction mandated for Washington, D.C., etc. in our U.S. Constitution's Article 1:8:17-18, including its "internal" government organizations therein or by contract adhesions thereto across America. And neither are millions of other such Citizens, unless they have provided "WAIVERS of Constitutional Rights" by "knowingly intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences"; as ruled by the 1970 Supreme Court (*Brady v. U.S.*, 397 U.S. 742 at 748). I have given no such "waivers."

3. These studies also prove that a shrewd and criminal Constructive Fraud has been perpetrated upon America by government under counterfeit "color of law," through apparent entrapments of "certain ACTIVITIES (monopoly occupations) and PRIVILEGES" (other benefits) allowed by Statutory Acts or otherwise. By never-repealed American Law, such sources of past and present Criminal Element in (and behind) Government should be brought to Justice in a Constitutional Court for aiding and abetting this Fraud as willing Accomplices. It is for such Court with a 12-member Jury of Peers to decide who is and is not Guilty among personnel of government, media, schools, lawyers, accountants, clergy and other purveyors of misinformation and propaganda in this and related regards.

4. Due to such shrewd entrapments. Over the years I have unwittingly signed many of the related documents or contracts, some even under the "perjury" jurat [sic] as was supposedly required. With American Law on this Citizen's side, I hereby REVOKE all such signatures and render them null and void except for those that I choose to have measured as being under "TDC" (threat, duress and/or coercion) and/or "without prejudice" (per U.C.C. 1-207), past and now. This is also my Lawful Notice that all such signature of mine in the future, with such governmental or otherwise-adhesions sources, are to be considered as under "TDC" and/or "without prejudice," whether appearing therewith or otherwise, including banks, licenses,

an employee, and voter registration; disclaiming private or public pension benefits, including Social Security benefits; closing credit card and bank accounts, except those through banks that are not guaranteed through the FDIC; paying off all loans; removing children from schools that accept public money; and refusing all mail that carries a ZIP code.<sup>145</sup>

The mindset of Sovereign Citizens is fascinating. They believe that the government has systematically and despotically acted to deprive them of their rights by illegally inducing them to enter into contracts, declaring a secret national state of emergency, and selling their children to the International Monetary Fund. At the same time, they profess to believe that this same government will obey its own laws and no longer exercise jurisdiction over them once they have reacquired their sovereign status. Some (although certainly not all) of the examples cited in this Comment represent people who have taken the above steps in good faith and really expect the government to leave them alone.

## G. Sovereign Citizen Motives

Like the legal theory of the tax protestor movement, much of Sovereign Citizen legal theory is generated with profit in mind.<sup>146</sup> Sovereign Citizen websites bulge with materials to help one regain Sovereign Citizen status and stop paying taxes. Examples include *The Complete Book on Sovereign Citizenship* (\$ 60),<sup>147</sup> *A Treatise on Sovereignty: Individual, State, and Federal* (\$ 79.95),<sup>148</sup> and membership in the National Commodity and Barter Association (\$ 495 for the first year, which includes the six-volume *Freedom Books*).<sup>149</sup> Those seeking instruction can enroll in George

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etc. So be it, respectfully demanding that my Constitutional "Privileges and Immunities" (Article 4:2) are apart from 1:8:17-18's Washington, D.C., and shall not by Law be violated ever.

5. With this accurate knowledge, I Lawfully "squarely challenge" the fraudulent, usurping octopus of JURISDICTIONAL/AUTHORITY (cited in Item #2 above) which does not apply to me (ref: Hagan v. Lavine [1974], 415 U.S. 527 at 533), with "the supreme Law of the Land" (our Constitution's 6"2) again on this Citizen's aide. It is therefore now mandatory for any personnel of Article 1:8:17-18's so-called "IRS," for example, to first prove its "jurisdiction," if any, over me before any further procedures can take place in my regard [Title 5, U.S. Code, 556(d)]; or else its personnel land accomplices wilfully [sic] violating this can and shall be personally charged as citizens under Title 18 U.S. Criminal Codes 241, 242, 1001 and/or otherwise. In fairness it can be added that "IRS" agents have no written, Lawful "Delegation of Authority" to my knowledge and that there so-called "form 1040" appears to be a bootleg document, lacking a proper OMB number (no expiration date).

6. With all of the above in mind, it appears that this private Citizen is by Law as "Foreign" and "Non-Resident Alien" to the Article 1:8:17-18's Washington, D.C., as to another country and thus shall feel free to use its forms when and as useful [e.g. W-8 "Certificate of FOREIGN STATUS," 1040NR for "U.S. Non-Resident Alien Income Tax Return" Refunds, and IRS Code Section 3402(n) to cancel "withholding"].

FURTHER THE AFFIANT SAITH NOT, on this date...(Signature)/TDC

See Roy R. Korte, *Common Law Movement in America 7* (unpublished materials supporting presentation at Libraryfest Midwest, Milwaukee, Wisconsin, on Oct. 8-10, 1998) (on file with the University of Wisconsin Law Library) exhibit A.

<sup>145</sup> See T. Collins, *White Paper on State Citizenship* (last modified Oct. 29, 1997)

<http://www.netaxs.com/delcolib/whitepaperonstatecitizenship.htm>

<sup>146</sup> See *Sadlier v. Payne*, 974 F. Supp. 1411, 1416 (D. Utah 1997) ("One thing of interest to the Court is the fact that in this case of no great moment the courtroom was filled with interested spectators. It seems that many had been advised of the hearing by one engaged in offering high priced legal procedure seminars for money and vending high priced books. Such persons ... should be less concerned with esoteric theories as to the effect on state judicial power by the presence of fringed flag, and more concerned with dealing honestly and fairly with those persons from whom they extract money in return for spurious scholarship and flawed opinions long since repudiated.").

<sup>147</sup> See Scott Eric Rosenstiel, *14th Amendment Citizenship* (visited Oct. 4, 1999) <http://www.civil-liberties.com/pages/art2.html>

<sup>148</sup> See *The Sovereignty Workshop BBS* (visited Jan. 8, 1999) <http://www.civil-liberties.com/pages/workshop.html>

<sup>149</sup> See *The Frog Farm FAQ* (last modified July 27, 1995) <http://www.the-enclave.net/p283.htm>

Gordon's School of Common Law (tuition is one ounce of gold per week)<sup>150</sup> or in a more sophisticated program such as that offered by the Supreme Law Firm:

Founder Paul Andrew Mitchell ... has spent the past eight years doing a detailed investigation of the United States Constitution, federal statute laws, and the important court cases. Writing under several pen names, Mitchell's work has reached all the way into the U.S. Supreme Court, which adopted "the federal zone" as a household word in their sweeping 1995 decision in *U.S. v. Lopez*. His massive book entitled "The Federal Zone: Cracking the Code of Internal Revenue" was first published in 1992, and became an instant underground success for its lucid language and indisputable legal authority.

Mitchell has litigated important cases in state and federal courts, including the case of *People v. Boxer*, which established that the so-called Sixteenth Amendment was a massive fraud upon the American People. U.S. Senator Barbara Boxer fell totally silent in the face of Mitchell's pleadings in that case.<sup>151</sup>

In addition to profit, Sovereign Citizen legal advice often advocates tactics for their harassment value. Theories are argued and appealed based not on their legal value but rather for their nuisance value in the hope that courts and prosecutors will simply give up.<sup>152</sup> Websites advise Sovereign Citizens on how to judgment-proof themselves<sup>153</sup> and recommend use of a twenty-three-question "Public Servant's Questionnaire" during any encounter with official authority.<sup>154</sup>

It is more difficult to assess the motives of individual Sovereign Citizen litigants. Do they litigate these theories to harass public officials, clog the courts, and delay legal actions that they believe will end badly for them? Or do they litigate them because they believe they are true? The distinction may seem pointless to public officials buried under piles of Sovereign Citizen documents, but it has profound implications for developing a systemic response to Sovereign Citizen litigation.

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<sup>150</sup> See *Id*

<sup>151</sup> Paul Andrew Mitchell, Supreme Law Firm (visited Jan. 10, 1999) <http://www.supremelaw.com>

<sup>152</sup> See, e.g., *Leverenz v. Torluemlu*, No. 96 C 2886, 1996 U.S. Dist. LEXIS 8444, \*1 (N.D. Ill. June 17, 1996).

<sup>153</sup> See FREE underground LEGAL ADVISOR (visited Oct. 29, 1998) <http://www.vax1.bemidji.msus.edu/plumer/Homepage.html>

<sup>154</sup> The Frog Farm FAQ (last modified July 27, 1995) <http://www.the-enclave.net/p283.htm> Among other things, the questionnaire asks for the home address of the public servant and demands that he or she furnish a copy of the law or regulation authorizing the investigation. See *id.* See also *United States v. Scott*, No. 98-3830, 1999 WL 518930 (7th Cir. June 23, 1999) (unpublished) (describing the "Public Servant Questionnaire" as "irrelevant and invasive.").

### III. Responses to the Sovereign Citizen Movement

To anyone with legal training, the theories of the Sovereign Citizen movement may seem absurd. But regardless of what trained legal minds may think of the theories advanced by the Sovereign Citizens, it is important that the legitimate legal system find some way to respond to them. Existing law largely provides the necessary tools to respond to Sovereign Citizen litigation, but a more fundamental response to the underlying issues is also required. This Section discusses potential solutions to the problems that Sovereign Citizen litigants pose to the court system. It begins by briefly examining responses to militia and common-law court movements, then discusses responses to for-profit Sovereign Citizen legal theorists. It concludes with a discussion of responses to individual Sovereign Citizens through enforcement of existing laws, use of sanctions and dismissal mechanisms in the court system, and education.

#### A. Responses to Militias and Common-Law Courts

In the period following the 1995 bombing of the Murrah Building in Oklahoma City, America saw armed militiamen under every bed and around every corner. Newspapers, magazines, and television programs broadcast images of camouflage-wearing, gun-toting madmen organizing and training.<sup>155</sup> The intervening four years have done little to calm the nation's fears. Members of militia groups have kidnapped innocent neighbors,<sup>156</sup> plotted to attack Army installations and the FBI Fingerprint Laboratory,<sup>157</sup> and armed for war against federal agents.<sup>158</sup> Persons claiming to be militia members have assaulted government personnel.<sup>159</sup> Many observers fear that common-law courts, which often claim close associations with militias,<sup>160</sup> will resort to violence to enforce their judgments.<sup>161</sup>

The response has been state criminalization of many of the activities of militias and common-law courts. In 1996, the Anti-Defamation League published a model statute intended to respond to the full range of common-law court activity.<sup>162</sup> The statute largely replicates existing protections.

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<sup>155</sup> See, e.g., David van Biema, *Militias*, Time, June 26, 1995, at 56.

<sup>156</sup> See Eduardo Montes, *W. Texas Town Still Scarred Year After Separatist Standoff: Many Residents Can't Shake Air of Misgiving Left by Republic Incident*, Dallas Morning News, Apr. 26, 1998, at 57A.

<sup>157</sup> See Tom Kenworthy, *U.S. Racking Up Convictions Against Militiamen Experts: Hardest Core Remains*, Arizona Republic, Jan. 3, 1998, at A7.

<sup>158</sup> See Carol M. Ostrom and Barbara A. Serrano, *Land of The Freemen Republic of Montana: Ranchers Issue Bounties on Lawmen, Storm Courthouse, Concoct Own Money. Neighbors Turn Against Neighbors in Struggle for Soul of Community*, Seattle Times, May 7, 1995, at A1.

<sup>159</sup> See, e.g., R.J. Larizza, *Paranoia, Patriotism, and the Citizen Militia Movement: Constitutional Right or Criminal Conduct?*, 47 Mercer L. Rev. 581, 592-93 (1996) (describing an assault by militia tax protestors against Karen Matthews, the clerk-recorder for Stanislaus County, California, who had refused to remove a \$ 416,000 IRS lien against property belonging to a militia member).

<sup>160</sup> See, e.g., Roy R. Korte, *Common Law Movement in America 7* (unpublished materials supporting presentation at Libraryfest Midwest, Milwaukee, Wisconsin, on Oct. 8-10, 1998) (on file with the University of Wisconsin Law Library) exhibit A.

<sup>161</sup> See *The Frog Farm FAQ* (last modified July 27, 1995) <http://www.the-enclave.net/p283.htm> at 97 (arguing that the common-law courts movement must inevitably lead to madness or violence).

<sup>162</sup> ADL Model "Common Law Courts" Statute:

A(1) Any person who deliberately impersonates or falsely acts as a public officer or tribunal, public employee or utility employee, including but not limited to marshals, judges, prosecutors, sheriffs, deputies, court personnel, or any law enforcement authority in connection with or relating to any legal process affecting person(s) and property; or  
(2) Any person who simulates legal process including, but not limited to, actions affecting title to real estate or personal property, indictments, subpoenas, warrants, injunctions, liens, orders, judgments, or any legal documents or proceedings;

Threats against judges and court personnel are not new, and the tools have long since been developed to respond to them.<sup>163</sup> Several states have passed laws allowing county recorders to reject nonconsensual liens filed by Sovereign Citizens or representatives of common-law courts.<sup>164</sup> Many of these statutes provide for a streamlined process to remove common-law liens filed in bad faith.<sup>165</sup> Missouri and Wisconsin have criminalized simulation of the legal process, and other states probably will follow suit.<sup>166</sup>

## B. Responses to For-Profit Sovereign Citizen Legal Theorists

Part II.F described several for-profit generators of Sovereign Citizen legal theory. Successfully stemming the tide of Sovereign Citizen litigation requires prosecution of the theorists in the same way that the federal government has successfully prosecuted tax protestor theorists. For example, Gordon Buttorff, an Iowa tax protestor, had conducted a series of meetings in which he and his partner advised participants to submit fraudulent income tax withholding forms.<sup>167</sup> Evidence presented at trial showed that Buttorff had engaged in only one affirmative act other than speaking: He had provided one witness with a fraudulently completed W-4 form.<sup>168</sup> Nevertheless, Buttorff was convicted of nine counts of aiding and abetting people to file false or fraudulent income tax returns in violation of 26 U.S.C. 7205 and 18 U.S.C. 2.<sup>169</sup> Buttorff argued that his only participation in the illegal activity was to discuss his views on income taxes in public and that he was thus protected under the First Amendment.<sup>170</sup> In affirming his conviction, the Eighth Circuit wrote:

“Although the speeches here do not incite the type of imminent lawless activity referred to in criminal syndicalism cases, the defendants did go beyond mere advocacy of tax reform. They explained how to avoid withholding and their speeches and explanations incited several individuals to activity that violated federal law and had the potential of substantially hindering the

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knowing or having reason to know the contents of any such documents or proceedings or the basis for any action to be fraudulent; or

(3) Any person who, while acting falsely under color of law, takes any action against person(s) or property; or

(4) Any person who falsely under color of law attempts in any way to influence, intimidate, or hinder a public official or law enforcement officer in the discharge of his or her official duties by means of, but not limited to, threats of or actual physical abuse, harassment, or through the use of simulated legal process....

Anti-Defamation League, "Common-Law Courts:" A Legislative Response 54, Appendix B (1996).

<sup>163</sup> See, e.g., *United States v. Schneider*, 910 F.2d 1569, 1570 (7th Cir. 1990) (upholding a five-year prison sentence for Schneider, who had sent a letter to the Illinois Supreme Court referring to the justices as "public serpents" and threatening to "execute" a circuit judge who had rendered a default judgment against him in a zoning dispute).

<sup>164</sup> See, e.g., Mo. Rev. Stat. 428.105-428.135 (Supp. 1996) and 575.130 (Supp. 1996).

<sup>165</sup> See *Id.*

<sup>166</sup> See *id.*; Wis. Stats. 946.68(1) (1996). Furthermore, Wis. Stats. 946.69(2) (a)(1996), provides that anyone who "assumes to act in an official capacity or to perform an official function, knowing that he or she is not the public officer or public employe" [sic] is guilty of a misdemeanor.

<sup>167</sup> See *United States v. Buttorff*, 572 F.2d 619, 622-23 (8th Cir. 1978).

<sup>168</sup> See *id.* at 623.

<sup>169</sup> See *id.* at 621-22. 26 U.S.C. 7205 prohibits filing false or fraudulent withholding information that, if reported truthfully, would require an increase in withholding. See *id.* at 622 n.1. 18 U.S.C 2(a) provides that "Whoever commits an offense against the United States or aids, abets, counsels, commands, induces, or procures its commission, is punishable as a principal." *Id.* at 622 n.2. To establish aiding or abetting, the government must show "some affirmative participation which at least encourages the perpetrator." *United States v. Thomas*, 469 F.2d 145, 147 (8th Cir. 1972).

<sup>170</sup> See *Buttorff*, 572 F.2d at 623

administration of the revenue. This speech is not entitled to first amendment protection and ... was sufficient action to constitute aiding and abetting the filing of false or fraudulent withholding forms." <sup>171</sup>

The Eighth Circuit upheld the conviction on the same statutes of a tax protestor who never met one of the people he was accused of aiding and abetting to file false income tax withholding information. <sup>172</sup> Alton Moss gave a radio interview in February 1978 in which he described how to avoid federal withholding tax. <sup>173</sup> Three men, Gronewold, Sanne, and Vanosdall, heard the interview; Gronewold then taped a March speech that Moss gave at a local hotel and played it for Sanne, Vanosdall, Lilienthal, and Spencer. <sup>174</sup> In April, Moss met with four of the five men (Spencer was not present) and told them he would defend them if they were accused of violating the law. <sup>175</sup> Convicted of five counts of aiding and abetting the filing of false withholding information, Moss appealed on the grounds that his speeches "(challenge) the constitutionality of the income tax laws as ... enforced in this country ... ," that he "espouses a political cause aimed at changing the tax law in the United States ... ," and that his actions were "absolutely protected" by the first amendment, any conviction founded on the present record being "outside the ... perview of ... the laws of this country." <sup>176</sup>

Citing *Buttorff*, the Eighth Circuit rejected this argument. Similarly, other circuits have upheld convictions of tax avoidance seminar presenters under the federal conspiracy <sup>177</sup> and mail fraud statutes. <sup>178</sup>

Income tax avoidance is a prominent goal of Sovereign Citizen legal strategy. This line of cases strongly suggests that the federal government could pursue Sovereign Citizen legal theorists who advocate income tax avoidance in seminars, perhaps going so far as to prosecute them for conspiring with or aiding and abetting people they have never met. Such prosecutions would deter some activity of the theorists, although it would not reach activity that is not directed toward violation of federal laws. <sup>179</sup> Prosecuting authors of Sovereign Citizen tax avoidance literature would incapacitate some and perhaps deter others from explicitly advocating tax avoidance.

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<sup>171</sup> *Id.* at 624.

<sup>172</sup> See *United States v. Moss*, 604 F.2d 569, 570 (8th Cir. 1979).

<sup>173</sup> See *id.*

<sup>174</sup> See *id.*

<sup>175</sup> See *id.*

<sup>176</sup> *Id.* at 571 (omissions, insertions, and typographical errors in original).

<sup>177</sup> 18 U.S.C. 371 (1994).

<sup>178</sup> 18 U.S.C. 1341 and 1342 (1994). See *United States v. Fleschner*, 98 F.3d 155, 157 (4th Cir. 1996) (upholding Fleschner's conspiracy conviction for conducting for-profit tax avoidance seminars at which he advised participants that wages were not income and that they should hide income by dealing only in cash); *United States v. Rowlee*, 899 F.2d 1275, 1276-77 (2d Cir. 1990) (upholding Rowlee's conviction for fourteen counts of conspiracy and six counts of mail fraud for his role in teaching tax avoidance seminars, selling "interrogatories" that he claimed could stop an audit and lay the groundwork for indicting IRS directors, serving as a tax advisor for clients who submitted false W-4 forms, and urging clients to file suits and Freedom of Information Act requests against the IRS to waste the agency's time).

<sup>179</sup> Prosecutions could be based on violations of state conspiracy statutes as well.

This strategy addresses a narrow area of for-profit Sovereign Citizen legal theory because it does not reach theorists who do not advocate violating federal law. *Rice v. Paladin Enterprises*,<sup>180</sup> a recent Fourth Circuit case, suggests that publishers of instructional materials may in some cases be civilly liable for activity of others that is based on those materials.<sup>181</sup> Hired killer James Perry murdered three people following detailed instructions printed in *Hit Man: A Technical Manual for Independent Contractors*, a 130-page book published by Paladin Enterprises.<sup>182</sup> Relatives and representatives of Perry's victims sued Paladin for wrongful death.<sup>183</sup> For purposes of summary judgment, Paladin stipulated that Perry followed instructions from *Hit Man*, that Paladin marketed *Hit Man* to attract and assist criminals, and that Paladin knew criminals would use *Hit Man* to carry out murders for hire.<sup>184</sup>

The district court granted Paladin's motion for summary judgment and dismissed the plaintiff's claims, holding that they were barred by the First Amendment as a matter of law.<sup>185</sup> The Fourth Circuit Court of Appeals reversed, however, concluding:

“Paladin's astonishing stipulations, coupled with the extraordinary comprehensiveness, detail, and clarity of *Hit Man's* instructions for criminal activity and murder in particular, the boldness of its palpable exhortation to murder, the alarming power and effectiveness of its peculiar form of instruction, the notable absence from its text of the kind of ideas for the protection of which the First Amendment exists, and the book's evident lack of any even arguably legitimate purpose beyond the promotion and teaching of murder, render this case unique in the law. In at least these circumstances, we are confident that the First Amendment does not erect the absolute bar to the imposition of civil liability for which Paladin Press and amici contend. Indeed, to hold that the First Amendment forbids liability in such circumstances as a matter of law would fly in the face of all precedent of which we are aware” ....<sup>186</sup>

The implications of *Rice* remain unclear. The facts of the case, including Paladin's stipulation, are so extreme that it is unlikely that they will ever be replicated. At least one commentator has suggested, however, that the Fourth Circuit's approach "would deny protection to instructional speech irrespective of context, if the words had a tendency to produce harm."<sup>187</sup> If applied broadly, such an approach would allow victims of Sovereign Citizen tactics such as filing false liens

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<sup>180</sup> 128 F.3d 233, 233 (4th Cir. 1997).

<sup>181</sup> See *id.* at 267.

<sup>182</sup> See *id.* at 239-41. The Fourth Circuit identified 16 points of similarity between Perry's actions and the plan outlined in *Hit Man*. See *id.*

<sup>183</sup> See *id.* at 241.

<sup>184</sup> See *Rice v. Paladin Enter.*, 940 F. Supp. 836, 841 (D. Md. 1996). Paladin apparently wanted the case dismissed solely on the First Amendment issue presented.

<sup>185</sup> See *id.* at 849.

<sup>186</sup> *Rice*, 128 F.3d at 267.

<sup>187</sup> . Isaac Molnar, Comment, Resurrecting the Bad Tendency Test to Combat Instructional Speech: Militias Beware, 59 Ohio St. L.J. 1333, 1367 (1998).

or harassment to sue those who develop and promulgate the strategy. It may even be allowable in criminal proceedings.<sup>188</sup>

Whether Rice will be construed narrowly or broadly remains to be seen, but litigation of any sort against authors of Sovereign Citizen materials may be impractical anyway. Many of the materials are written anonymously or under pseudonyms. They are not published by established publishers like Paladin Enterprises; instead, they are photocopied or printed for distribution by the author or his associates. They are not sold through established distribution channels but rather on display tables at gun shows and county fairs. They do not have ISBN numbers, and they are not registered with the Library of Congress. They circulate within small, close-knit groups, and even members of the group may never know the author.

### C. Responses to Individual Sovereign Citizens

Framing responses to the activities of individual Sovereign Citizens depends in large measure on what one believes they are doing. Are they troublemakers seeking to clog the courts with frivolous pleadings and harass government officials? Or are they sincere but misguided litigants trying to protect the rights that they mistakenly believe have been taken from them? Most responses to Sovereign Citizen litigants are based on the assumption that they are troublemakers, but a comprehensive solution to the growing problem of Sovereign Citizen litigation requires consideration of the alternative as well. This Subsection discusses responses to the activities of individual Sovereign Citizens in three areas: illegal activities, abusive litigation practices, and activities at the community level.

#### 1. responses to illegal activities

Sovereign Citizen litigation often begins because the Sovereign Citizen feels he or she has been victimized in some way, whether through foreclosure, issuance of a traffic citation, or demand for payment of income taxes. Some Sovereign Citizens fight back through their institutions or the conventional courts; others fight back with threats or by filing common-law liens or U.C.C. liens on the property of their opponents.<sup>189</sup> Criminal and civil remedies are available in such cases, and states should not hesitate to use them. Slander of title is a crime in Wisconsin, as it is in many other states.<sup>190</sup> Civil causes of action exist for criminal slander of title<sup>191</sup> and for filing liens against the real or personal property of public officials relating to an alleged breach of duty.<sup>192</sup>

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<sup>188</sup> See *id.* at 1369-70 (arguing that "the 'bad tendency' test will allow the jury, without the restraints of an imminence requirement, to infer intent from the tendency of the speaker's words ... despite the absurdly remote possibility that the words would lead to action").

<sup>189</sup> See Roy R. Korte, *Common Law Movement in America* 7 (unpublished materials supporting presentation at Libraryfest Midwest, Milwaukee, Wisconsin, on Oct. 8-10, 1998) (on file with the University of Wisconsin Law Library) at 7-9. U.C.C. liens are forged U.C.C. financing statements granting the "creditor" a security interest in the debtor's property. They are filed with the Secretary of State or Register of Deeds.

<sup>190</sup> See Wis. Stat. 943.60(1) (Supp. 1997) ("Any person who submits for filing, entering or recording any lien, claim of lien, lis pendens, writ of attachment, financing statement, or any other instrument relating to a security interest in or title to real or personal property, and who knows or should have known that the contents or any part of the contents of the instrument are false, a sham or frivolous, is guilty of a Class D felony.").

<sup>191</sup> See Wis. Stat. 706.13 (Supp. 1997).

<sup>192</sup> See Wis. Stat. 706.15 (Supp. 1995).

## 2. response to abusive litigation practices

Statistics regarding Sovereign Citizen litigation are not available, but courts regularly confront Sovereign Citizen pleadings.<sup>193</sup> Judges are required to construe all claims to "do substantial justice,"<sup>194</sup> a responsibility that theoretically is enhanced when construing pleadings of pro se litigants unfamiliar with the legal system. Sovereign Citizen pleadings are detailed and confusing, raising convoluted legal issues and perverse images like the "usurping octopus of JURISDICTIONAL/AUTHORITY."<sup>195</sup> Not surprisingly, judges resent being forced to respond to tactics apparently designed to annoy them or frustrate the administration of justice.<sup>196</sup> Still, they appear to take the complicated and rambling pleadings seriously, sifting through the convoluted writing and bizarre theories to determine whether they raise valid legal contentions and deciding for them in the rare cases when they do.<sup>197</sup>

Mechanisms for dismissal are available, but their use still requires judges or court personnel to read the complaint to ensure that it does not contain a valid legal contention. Federal courts may dismiss a case at any time if the court determines that the action or appeal is frivolous or malicious.<sup>198</sup> A complaint is frivolous "where it lacks an arguable basis either in law or in fact. [The] term 'frivolous,' when applied to a complaint, embraces not only the inarguable legal conclusion but also the fanciful factual allegation."<sup>199</sup> Unlike a dismissal for failure to state a claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure, section 1915(e) dismissals do not

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<sup>193</sup> See Sean Munger, *Bill Clinton Bugged My Brain!: Delusional Claims in Federal Courts*, 72 *Tul. L. Rev.* 1809, 1812 n.20 (1998) ("The ubiquity and character of such claims is evident even after spending only a short time in a federal court setting. The author of this comment interned with a federal magistrate in a United States district court in the Midwest and after less than two weeks there encountered a delusional claim. It involved an elderly Nebraska farmer and wife who claimed that the government of the United States had been secretly overthrown by the military during the 1930s, citing as evidence of this coup the military-style gold fringe on the flag in the U.S. district courtroom."). The elements of the delusional claim Munger encountered are similar to many Sovereign Citizen pleadings. In interviewing for judicial clerkships, the author has spoken with several judges who had come across Sovereign Citizen pleadings.

<sup>194</sup> Fed. R. Civ. P. 8(f).

<sup>195</sup> See Roy R. Korte, *Common Law Movement in America 7* (unpublished materials supporting presentation at Libraryfest Midwest, Milwaukee, Wisconsin, on Oct. 8-10, 1998) (on file with the University of Wisconsin Law Library) exhibit A

<sup>196</sup> See, e.g., *State v. Dempsey*, No. 86-0924- CR, 1987 Wisc. App. LEXIS 3407, at \*2 (Wis. Ct. App. Jan. 26, 1987) ("An appellate court is not a performing bear required to dance to every tune played on appeal.") (citation omitted).

<sup>197</sup> See, e.g., Robert Perez, *Tax Bill Met with Heavenly Protest*, *Orlando Sentinel*, Nov. 2, 1997, at K1 (reporting a Florida circuit judge's discovery of valid legal contentions in a Sovereign Citizen pleading. The judge remarked, "Even a blind squirrel can sometimes find an acorn.").

<sup>198</sup> See 28 U.S.C. 1915(e)(2) (Supp. 1999). Previously, the statute (then section 1915(d)) had only allowed courts to dismiss frivolous actions filed in forma pauperis; frivolous litigants who paid the filing fee were allowed to continue, albeit briefly. See Munger, *supra* note 193, at 1812. The old statute was designed to "discourage the filing of baseless lawsuits that paying litigants generally do not initiate because of cost and the threat of sanctions." 32 *Am. Jur. 2d Federal Courts* 534 (1960). Courts were (and still are) required to reserve summary dismissal only for extreme frivolousness. See 32 *Am. Jur. 2d Federal Courts* 536 (1960).

<sup>199</sup> *Neitzke v. Williams*, 490 U.S. 319, 325-26, 329 (1989) ("To this end, the statute accords judges not only the authority to dismiss a claim based on an indisputably meritless legal theory, but also the unusual power to pierce the veil of the complaint's factual allegations and dismiss those claims whose factual contentions are clearly baseless.").

require notice or an opportunity to amend before the claim is dismissed.<sup>200</sup> Similar mechanisms are available in state court systems.<sup>201</sup>

Again, no statistics are available, but it seems likely that most Sovereign Citizen complaints are dismissed as frivolous actions under 28 U.S.C. 1915(e)(1) or the equivalent in state court systems. Sovereign Citizen suits against judges and prosecutors are virtually always frivolous because the doctrine of absolute immunity prohibits suits against them for actions performed in the course of their duties. As a result, Sovereign Citizens appear in most reported cases either as appellants objecting to the dismissal of their suits or as defendants.

Courts also have an array of sanctions available to use against abusive Sovereign Citizen litigants. Sanctions in tax protestor cases can be particularly severe,<sup>202</sup> but federal courts can apply Rule 11 sanctions for frivolous litigation, "[and] if a person should have known that his position is groundless, a court may and should impose sanctions."<sup>203</sup> The Seventh Circuit's justification for sanctions clearly identifies the hope of every court:

People who wish to express displeasure with taxes must choose other forums, and there are many available. Taxes are onerous, no doubt, and the size of the tax burden gives people reason to hope that they can escape payment. Self-interest calls forth obtuseness. An obtuse belief - even if sincerely held - is no refuge, no warrant for imposing delay on the legal system and costs on one's adversaries. The more costly obtuseness becomes, the less there will be.<sup>204</sup>

Even the Seventh Circuit admits that "the routine use of sanctions does not deter unless people know what lies in store."<sup>205</sup> Sanctions also do not deter if the litigant is convinced of the righteousness of his actions or if he is judgment proof. As a last resort, federal courts may attempt to control persistent litigants by imposing a pre-filing review requirement under 28 U.S.C. 1651(a).

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<sup>200</sup> See *id.* at 329.

<sup>201</sup> See, e.g., *Reed v. Stein*, No. 88- A-1392, 1990 Ohio App. LEXIS 2723, at \*2 (Ohio Ct. App. June 29, 1990) (upholding award of attorney's fees under Ohio statute against Sovereign Citizen who engaged in "frivolous conduct").

<sup>202</sup> See 26 U.S.C. 6673(a)(1) (Supp. 1999) (authorizing the Tax Court to award a penalty of up to \$ 25,000 when proceedings have been instituted or maintained primarily for delay, or where the taxpayer's position is frivolous or groundless if it is contrary to established law and unsupported by a reasoned, colorable argument for change in the law).

<sup>203</sup> *Coleman v. Commissioner*, 791 F.2d 68, 71 (7th Cir. 1986). Rule 11 sanctions can include attorney fees and court costs, as well as other sanctions. See *Nixon v. Phillipoff*, 615 F. Supp. 890, 897 (N.D. Ind. 1985). State courts have similar powers.

<sup>204</sup> *Coleman*, 791 F.2d at 72. Judging by the high number of cases in which the Seventh Circuit has seen fit to impose sanctions since 1986, one must wonder whether the court is reconsidering its approach. See, e.g., *Harrell v. Commissioner*, No. 98-4120, 1999 WL 638510 (7th Cir. Aug. 18, 1999) (unpublished) (upholding the Tax Court's sanction against a tax protestor who argued that "Federal Reserve notes are not dollars representing a parity of gold or silver content in fineness and weight as defined by the Coinage Act of 1792"); *United States v. Scott*, No. 98-3830, 1999 WL 518930 (7th Cir. June 23, 1999) (unpublished) (imposing sanctions on the court's own motion against Scott for filing a tax protestor appeal that the court characterized as "frivolous squared"); *Jamroz v. Panuthos*, No. 97-1813, 1997 WL 730303 (7th Cir. Nov. 20, 1997) (unpublished).

<sup>205</sup> *Id.*

<sup>206</sup> "The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. 1651(a). Federal courts may impose a pre-filing review requirement when four conditions are met:

- (1) plaintiff is given adequate notice to oppose a restrictive pre-filing order before it is entered;
- (2) the court [sic] provides an adequate record for review, including a listing of all the cases and motions that led the court to conclude that a vexatious litigant order was needed;

### 3. response to community activities

Finally, the need for legal solutions to the problems that Sovereign Citizen litigation poses must not obscure the need for other, more fundamental types of solutions as well. Many members of the Sovereign Citizen and common-law courts movements are deeply angry at the judicial system. Common-law court members frequently describe perceived injustices that led them to reject the traditional courts and turn to their own courts.<sup>207</sup>

What if the Sovereign Citizen litigants are sincere? Suppose that the litigant has paid \$ 79.95 for Ken Adler's Treatise on Sovereignty: Individual, State, and Federal because he cannot afford a lawyer and has nowhere else to turn. Suppose that he reads it and believes it and litigates according to its suggestions. What are the obligations of the court system and individual lawyers to such a person?

Simply put, the court system and individual lawyers must educate. Where Sovereign Citizen legal theory flourishes, it does so because people believe that the legitimate court system is not meeting their needs. The Posse Comitatus was disturbing because its adherents were not wild-eyed militants but rather stolid midwestern farmers, men and women who turned to a radical alternative only when convinced it would enable them to retain their lands legally despite the grim reality of foreclosure. Many Sovereign Citizens find themselves in similar situations.<sup>208</sup> They live in rural communities, but these communities are not isolated from the outside world. They have televisions, newspapers, and lawyers. People trained in the law can refute Sovereign Citizen arguments, whether they choose to do so in print, on the internet, or over bacon and eggs at the local diner, but first they must understand both the arguments and the people who make them. Then, they can respond with respect and courtesy, but firmly, with facts and reality. Point out that there is a legitimate, perfectly rational explanation for literally every piece of evidence the Patriots can produce for their theories that the government is part of a grand conspiracy to destroy the nation. Explain that the legal arguments they present for their constitutionalist beliefs have long been answered by real court rulings, many dating back to the Civil War, and that the web of pseudo-legal theory the Patriots espouse is a sham with no recognizable legitimacy, especially not in the body of law as practiced in America today.<sup>209</sup>

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(3) the Court makes substantive findings as to the frivolous or harassing nature of the litigant's actions; and

(4) the Court order is narrowly tailored.

*Johns v. Town of Los Gatos*, 834 F. Supp. 1230, 1232 (N.D. Cal. 1993) (citation omitted) (imposing a pre-filing review requirement on litigant who showed a history of frivolous and harassing litigation and the propensity to continue it).

<sup>207</sup> See Robert P. Sigman, "Trials" Lack Legal Standing: Groups Ignore Legitimate System of Governance, *Kan. City Star*, Aug. 6, 1997, at C6 (Kansas Territorial Agricultural Society began after property forfeiture for non-payment of taxes); Myers, *supra* note 130, at B-01 (member of Colorado common-law court became involved after foreclosure on Nebraska land).

<sup>208</sup> See, e.g., Ostrom and Serrano, *supra* note 158 (describing Militia of Montana adherents who filed Sovereign Citizen pleadings when faced with foreclosure).

<sup>209</sup> David Neiwert, *Ash on the Sills: The Significance of the Patriot Movement in America*, 58 *Mont. L. Rev.* 19, 42 (1997).

## IV. Conclusion

Any response to the Sovereign Citizen movement must begin with an understanding of the movement's origins within a group of largely rural Americans who feel they have been disenfranchised by America's court system. While understanding Sovereign Citizen legal theory may be difficult to ask of anyone, an effective response also requires awareness of their arguments, logic, and tactics. It is crucial to be able to identify Sovereign Citizen activities in order to sanction abusive Sovereign Citizen litigants, prevent the use of destructive tactics, and thwart for-profit Sovereign Citizen theorists. At the same time, judges, attorneys, officials, and members of the public must understand Sovereign Citizen arguments sufficiently to be able to engage them in a dialogue that will bring them back to the mainstream, far from the grasping tentacles of the "usurping octopus of JURISDICTIONAL/AUTHORITY."